UNITED STATES REPORTS

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CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 1996

Beginning of Term
October 7, 1996, Through February 26, 1997

Together With Opinion of Individual Justice in Chambers

FRANK D. WAGNER
REPORTER OF DECISIONS

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ERRATUM

516 U. S. 1101, line 7: "63 Ohio St. 3d 1418" should be "63 Ohio St. 3d 1419".

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

WILLIAM H. REHNQUIST, Chief Justice.
JOHN PAUL STEVENS, Associate Justice.
SANDRA DAY O'CONNOR, Associate Justice.
ANTONIN SCALIA, Associate Justice.
ANTHONY M. KENNEDY, Associate Justice.
DAVID H. SOUTER, Associate Justice.
CLARENCE THOMAS, Associate Justice.
RUTH BADER GINSBURG, Associate Justice.
STEPHEN BREYER, Associate Justice.

RETIRED

LEWIS F. POWELL, Jr., Associate Justice.
WILLIAM J. BRENNAN, Jr., Associate Justice.
BYRON R. WHITE, Associate Justice.
HARRY A. BLACKMUN, Associate Justice.

OFFICERS OF THE COURT

JANET RENO, Attorney General.
WALTER DELLINGER, Acting Solicitor General.*
WILLIAM K. SUTER, Clerk.
FRANK D. WAGNER, Reporter of Decisions.
DALE E. BOSLEY, Marshal.
SHELLEY L. DOWLING, Librarian.

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*Acting Solicitor General Dellinger was presented to the Court on October 7, 1996. See *post*, p. v.

SUPREME COURT OF THE UNITED STATES

ALLOTMENT OF JUSTICES

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective September 30, 1994, viz.:

For the District of Columbia Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the First Circuit, DAVID H. SOUTER, Associate Justice.

For the Second Circuit, RUTH BADER GINSBURG, Associate Justice.

For the Third Circuit, DAVID H. SOUTER, Associate Justice.

For the Fourth Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the Fifth Circuit, ANTONIN SCALIA, Associate Justice.

For the Sixth Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Seventh Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Eighth Circuit, CLARENCE THOMAS, Associate Justice.

For the Ninth Circuit, SANDRA DAY O'CONNOR, Associate Justice.

For the Tenth Circuit, STEPHEN BREYER, Associate Justice.

For the Eleventh Circuit, ANTHONY M. KENNEDY, Associate Justice.

For the Federal Circuit, WILLIAM H. REHNQUIST, Chief Justice.

September 30, 1994.

(For next previous allotment, and modifications, see 502 U. S., p. VI, 509 U. S., p. V, and 512 U. S., p. V.)

PRESENTATION OF THE ACTING SOLICITOR GENERAL

Supreme Court of the United States

MONDAY, OCTOBER 7, 1996

Present: Chief Justice Rehnquist, Justice Stevens, Justice O'Connor, Justice Scalia, Justice Kennedy, Justice Souter, Justice Thomas, Justice Ginsburg, and Justice Breyer.

The Chief Justice said:

The Court now recognizes the Attorney General, Janet Reno.

The Attorney General said:

Mr. Chief Justice, and may it please the Court. I have the honor to present to the Court the Acting Solicitor General, Walter Dellinger of North Carolina.

The Chief Justice said:

Thank you, General Reno.

Mr. Solicitor General, the Court welcomes you to the performance of the important office that you have assumed, to represent the government of the United States before this Court. We wish you well in your new office.

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1996

UNITED STATES DEPARTMENT OF STATE, BUREAU OF CONSULAR AFFAIRS, ET AL. *v.* LEGAL ASSISTANCE FOR VIETNAMESE ASYLUM SEEKERS, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 95–1521. Argued October 15, 1996—Decided October 21, 1996

45 F. 3d 469 and 74 F. 3d 1308, vacated and remanded.

Deputy Solicitor General Kneedler argued the cause for petitioners. With him on the briefs were *Acting Solicitor General Dellinger*, *Assistant Attorney General Hunger*, *Paul R. Q. Wolfson*, *Michael Jay Singer*, and *Robert M. Loeb.*

Daniel Wolf argued the cause for respondents. With him on the briefs were *William R. Stein* and *Robert B. Jobe.*

PER CURIAM.

The judgment is vacated, and the case is remanded to the United States Court of Appeals for the District of Columbia Circuit for further consideration in light of § 633 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (enacted as Division C of the Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104–208, 110 Stat. 3009–701).

CALIFORNIA ET AL. *v.* ROY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 95–2025. Decided November 4, 1996

A California court convicted respondent Roy of robbery and first-degree murder. The State contended that Roy, coming to the aid of a confederate who was committing the robbery, helped with the murder. The jury was instructed that it could convict if, *inter alia,* Roy, with knowledge of the confederate's unlawful purpose, had helped the confederate. The State Supreme Court later held an identical instruction erroneous because it did not require the jury to find that a defendant had the knowledge *and intent or purpose* of committing, encouraging, or facilitating the confederate's crime. Despite this error, the State Court of Appeal affirmed Roy's conviction, finding that the error was "harmless beyond a reasonable doubt." See *Chapman* v. *California,* 386 U. S. 18, 24. The Federal District Court considering Roy's habeas claim also found the error harmless, reasoning that no rational juror could have found that Roy knew the confederate's purpose and helped him but also did not intend to help him. In reversing, the en banc Ninth Circuit applied a special harmless-error standard, which it believed combined aspects of the decisions in *Carella* v. *California,* 491 U. S. 263 *(per curiam),* and *O'Neal* v. *McAninch,* 513 U. S. 432, and held that the omission of the instruction's intent part is harmless only if a review of the assistance and knowledge facts found by the jury establish that the jury necessarily found the omitted intent element.

Held: As a federal court reviewing a state-court determination in a habeas corpus proceeding, the Ninth Circuit should have applied the harmless-error standard first enunciated in *Kotteakos* v. *United States,* 328 U. S. 750, namely, whether the error had substantial and injurious effect or influence in determining the jury's verdict. The Ninth Circuit drew its standard from a discussion in *Carella*'s concurring opinion about the proper way to determine whether an error in respect to the use of a legal presumption was harmless. Subsequent to *Carella,* however, this Court held in *Brecht* v. *Abramson,* 507 U. S. 619, and *O'Neal, supra,* that a federal court reviewing a habeas proceeding ordinarily should apply the *Kotteakos* standard. That standard applies to habeas review of trial errors, including errors in respect to which the Constitution requires state courts to apply a stricter, *Chapman*-type harmless-error standard when reviewing a conviction directly. The sort of error at issue in *Carella* is a trial error subject to harmless-error analysis. The error at issue here—a misdescription of an element of the crime—is an error of omission, not an error of the structural sort that defies harmless-error analysis.

Certiorari granted; 81 F. 3d 863, vacated and remanded.

PER CURIAM.

A California court convicted respondent Kenneth Roy of the robbery and first-degree murder of Archie Mannix. The State's theory, insofar as is relevant here, was that Roy, coming to the aid of a confederate who was trying to rob Mannix, helped the confederate kill Mannix. The trial judge gave the jury an instruction that permitted it to convict Roy of first-degree murder as long as it concluded that (among other things) Roy, "with knowledge of" the confederate's "unlawful purpose" (robbery), had helped the confederate, *i. e.*, had "aid[ed]," "promote[d]," "encourage[d]," or "instigate[d]" by "act or advice . . . the commission of" the confederate's crime. The California Supreme Court later held in *People* v. *Beeman*, 35 Cal. 3d 547, 561, 674 P. 2d 1318, 1326 (1984), that an identical instruction was erroneous because of what it did not say, namely, that state law also required the jury to find that Roy had the "knowledge [and] *intent or purpose* of committing, encouraging, or facilitating" the confederate's crime. *Id.*, at 561, 674 P. 2d, at 1326 (emphasis added). Despite this error, the California Court of Appeal affirmed Roy's conviction because it found the error "harmless beyond a reasonable doubt." See *Chapman* v. *California*, 386 U. S. 18, 24 (1967). The California Supreme Court denied postconviction relief.

Subsequently Roy, pointing to the same instructional error, asked a Federal District Court to issue a writ of habeas corpus. The District Court denied the request because, in its view, the error was harmless. Indeed, the District Court wrote that no rational juror could have found that Roy knew the confederate's purpose and helped him but also found that Roy did not *intend* to help him. A divided

Ninth Circuit panel affirmed. *Roy* v. *Gomez,* 55 F. 3d 1483 (1995).

The Ninth Circuit later heard the case en banc and reversed the District Court. It held that the instructional error was not harmless. 81 F. 3d 863 (1996). In doing so, the majority applied a special "harmless error" standard, which it believed combined aspects of our decisions in *Carella* v. *California,* 491 U. S. 263 (1989) *(per curiam),* and *O'Neal* v. *McAninch,* 513 U. S. 432 (1995). The Ninth Circuit described the standard as follows:

> "[T]he omission is harmless only if review of the facts found by the jury establishes that the jury *necessarily* found the omitted element." 81 F. 3d, at 867 (emphasis in original).

As we understand that statement in context, it meant:

> "[T]he omission [of the 'intent' part of the instruction] is harmless only if review of the facts found by the jury [namely, assistance and knowledge] establishes that the jury *necessarily* found the omitted element [namely, 'intent']." *Ibid.*

The State of California, seeking certiorari, argues that this definition of "harmless error" is far too strict and that this Court's decisions require application of a significantly less strict "harmless error" standard in cases on collateral review. See *Brecht* v. *Abrahamson,* 507 U. S. 619 (1993); *O'Neal, supra.*

We believe that the State, and the dissenting judges in the Ninth Circuit, are correct about the proper standard. The Ninth Circuit majority drew its special standard primarily from a concurring opinion in *Carella, supra,* a case that dealt with legal presumptions. The concurrence in that case set out the views of several Justices about the proper way to determine whether an error in respect to the use of a presumption was "harmless." Subsequent to *Carella,* however, this Court held that a federal court reviewing a state-court determination in a habeas corpus proceeding ordinarily should apply the "harmless error" standard that the Court had previously enunciated in *Kotteakos* v. *United States,* 328 U. S. 750 (1946), namely, "whether the error 'had substantial and injurious effect or influence in determining the jury's verdict.'" *Brecht, supra,* at 637 (citing *Kotteakos, supra,* at 776). The Court recognized that the *Kotteakos* standard did not apply to "'structural defects in the constitution of the trial mechanism, which defy analysis by "harmless-error" standards,'" 507 U. S., at 629, but held that the *Kotteakos* standard did apply to habeas review of what the Court called "trial errors," including errors in respect to which the Constitution requires state courts to apply a stricter, *Chapman*-type standard of "harmless error" when they review a conviction directly. 507 U. S., at 638. In *O'Neal, supra,* this Court added that where a judge, in a habeas proceeding, applying this standard of harmless error, "is in grave doubt as to the harmlessness of an error," the habeas "petitioner must win." *Id.,* at 437.

The case before us is a case for application of the "harmless error" standard as enunciated in *Brecht* and *O'Neal.* This Court has written that "constitutional error" of the sort at issue in *Carella* is a "trial error," not a "structural error," and that it is subject to "harmless error" analysis. *Arizona* v. *Fulminante,* 499 U. S. 279, 306–307 (1991). The state courts in this case applied harmless-error analysis of the strict variety, and they found the error "harmless beyond a reasonable doubt." *Chapman, supra,* at 24. The specific error at issue here—an error in the instruction that defined the crime—is, as the Ninth Circuit itself recognized, as easily characterized as a "misdescription of an element" of the crime, as it is characterized as an error of "omission." 81 F. 3d, at 867, n. 4. No one claims that the error at issue here is of the "structural" sort that "'def[ies] analysis by "harmless error" standards.'" *Brecht, supra,* at 629. The analysis advanced by the Ninth Circuit, while certainly consistent with the concurring opinion in *Carella,* does not, in our view, overcome the holding of *Brecht,* followed in *O'Neal,* that for reasons related to the special function of habeas courts, those courts must review such error (error that may require strict review of the *Chapman*-type on direct appeal) under the *Kotteakos* standard. Thus, we are convinced that the "harmless error" standards enunciated in *Brecht* and *O'Neal* should apply to the "trial error" before us as enunciated in those opinions and without the Ninth Circuit's modification.

For these reasons, we grant respondent's motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari, vacate the Ninth Circuit's determination, and remand for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, with whom JUSTICE GINSBURG joins as to Part I, concurring.

I

I agree with what the Court decides in its *per curiam* opinion: that the *Brecht-O'Neal* standard for reversal of the conviction ("grave doubt as to the harmlessness of the error"), see *Brecht* v. *Abrahamson,* 507 U. S. 619 (1993), and *O'Neal* v. *McAninch,* 513 U. S. 432 (1995), rather than the more stringent *Chapman* standard (inability to find the error "harmless beyond a reasonable doubt"), see *Chapman* v. *California,* 386 U. S. 18 (1967), applies to the error in this case when it is presented, not on direct appeal, but as grounds for habeas corpus relief. The Ninth Circuit did not apply that more deferential standard, and I therefore concur in the remand.

I do not understand the opinion, however, to address the question of what *constitutes* the harmlessness to which this more deferential standard is applied—and on that point the Ninth Circuit was quite correct. As we held in *Sullivan*

v. *Louisiana,* 508 U. S. 275 (1993), a criminal defendant is constitutionally entitled to a *jury verdict* that he is guilty of the crime, and absent such a verdict the conviction must be reversed, "no matter how inescapable the findings to support that verdict might be." *Id.,* at 279. A jury verdict that he is guilty of the crime means, of course, a verdict that he is guilty of *each necessary element* of the crime. *United States* v. *Gaudin,* 515 U. S. 506, 522–523 (1995). Formally, at least, such a verdict did not exist here: The jury was never asked to determine that Roy had the "intent or purpose of committing, encouraging, or facilitating" his confederate's crime. *People* v. *Beeman,* 35 Cal. 3d 547, 561, 674 P. 2d 1318, 1326 (1984).

The absence of a formal verdict on this point cannot be rendered harmless by the fact that, given the evidence, no reasonable jury would have found otherwise. To allow the error to be cured in that fashion would be to dispense with trial by jury. "The Sixth Amendment requires more than appellate speculation about a hypothetical jury's action, or else directed verdicts for the State would be sustainable on appeal; it requires an actual jury finding of guilty." *Sullivan, supra,* at 280. The error in the present case can be harmless only if the jury verdict on other points effectively embraces this one or if it is impossible, upon the evidence, to have found what the verdict *did* find without finding this point as well. See *Carella* v. *California,* 491 U. S. 263, 271 (1989) (SCALIA, J., concurring). I concur in the remand so that the Ninth Circuit may determine whether there is "grave doubt" that this is so, rather than (what it did) determine whether it is impossible to "be certain" that this is so, 81 F. 3d 863, 867 (1996). Elsewhere in its opinion, the Ninth Circuit purported to be applying the *O'Neal* standard, stating that "[w]hen the reviewing court is unable to conclude the jury necessarily found an element that was omitted from the instructions," it "can only be 'in grave doubt as to the harmlessness of the error,'" 81 F. 3d, at 868 (quoting *O'Neal*

v. *McAninch, supra,* at 437). That seems to me to impart to the determination a black-and-white character which it does not possess, any more than other determinations possess it. It can be "the better view," but far from "certain," that, given the facts in the record, no juror could find x without also finding y. What *O'Neal* means is that, when the point is arguable, the State's determination of harmless error must be sustained.

II

One final point: I write as I have written only because the Court has rejected the traditional view of habeas corpus relief as discretionary. See *Withrow* v. *Williams,* 507 U. S. 680, 720 (1993) (SCALIA, J., concurring in part and dissenting in part). But for that precedent, I would be content to grant federal habeas relief for this sort of state-court error only when there has been no opportunity to litigate it before, or when there is substantial doubt, on the facts, whether the defendant was guilty. See *ibid.*

LOPEZ ET AL. *v.* MONTEREY COUNTY, CALIFORNIA, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. 95–1201. Argued October 8, 1996—Decided November 6, 1996

As a jurisdiction covered by § 5 of the Voting Rights Act of 1965, appellee Monterey County (hereinafter County) must obtain federal preclearance—either from the Attorney General of the United States or from the United States District Court for the District of Columbia—of any voting practice different from its practices on November 1, 1968. On that date, the County had nine separate and independent inferior court districts, the judges of which were elected exclusively by their respective districts' voters. Between 1972 and 1983, the County adopted six ordinances, which ultimately merged all the districts into a single, countywide municipal court served by judges whom County residents elected at large. This consolidation took place against a backdrop of California laws, some of which governed courts generally and others of which applied to the County's courts specifically. In 1991, appellants, Hispanic voters residing in the County, sued in the District Court, alleging that the County had violated § 5 by failing to obtain federal preclearance of the consolidation ordinances. The three-judge District Court ordered the County to obtain federal preclearance of the challenged ordinances. But the County did not submit the ordinances to the appropriate federal authorities. Instead, the County began to work with appellants to develop a new judicial election plan that they believed would be less retrogressive than the at-large, countywide election scheme. The State of California, as intervenor, opposed the parties' proposed plans. Ultimately, the District Court ordered the County to conduct judicial elections under an at-large, countywide election plan. In essence, four years after the filing of the complaint, the District Court ordered the County to hold elections under the very same scheme that appellants had originally challenged under § 5 as unprecleared.

Held:

1. This Court leaves to the District Court to resolve on remand appellee State's threshold contentions that, although the County perhaps should have submitted the consolidation ordinances for federal preclearance before implementing them, intervening changes in California law have transformed the County's judicial election scheme into a state plan, for which § 5 preclearance is not needed; that appellants' suit was barred

by laches; that it is constitutionally improper to designate the County a covered jurisdiction under § 5; and that the consolidation ordinances did not alter a voting "standard, practice, or procedure" subject to § 5 preclearance. Pp. 19–20.

2. The District Court's order that the County conduct elections under its unprecleared, at-large judicial election plan conflicts with *Clark* v. *Roemer,* 500 U. S. 646, 652–653, in which the Court held, among other things, that a voting change subject to § 5 is unenforceable unless precleared and that § 5 plaintiffs are entitled to an injunction prohibiting implementation of an unprecleared change. Thus, an injunction is required where, as here, a district court must decide whether to allow illegal elections to go forward. *Id.,* at 654. There is no "extreme circumstance" here that might justify allowing the 1996 elections to proceed, cf. *id.,* at 654–655, and the District Court has not independently crafted a remedial electoral plan such as might render the preclearance requirements inapplicable, see *McDaniel* v. *Sanchez,* 452 U. S. 130, 148–150. Nor is the preclearance process' basic nature changed by the complicating factors that a simple injunction could leave the County without a judicial election system because a return to the 1968 plan appears impractical, and that the parties seem unable to fashion a plan that does not contravene California law. Congress gave exclusive authority to pass on an election change's discriminatory effect or purpose to the federal authorities designated in § 5. See *id.,* at 151. On a complaint alleging failure to preclear election changes under § 5, a three-judge district court may determine only whether § 5 covers a contested change, whether § 5's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, is appropriate. See *City of Lockhart* v. *United States,* 460 U. S. 125, 129, n. 3. The goal of a three-judge district court facing a § 5 challenge must be to ensure that the covered jurisdiction submits its election plan to the appropriate federal authorities for preclearance as expeditiously as possible. Here, by protracting this litigation in order to obtain a plan that complied both with § 5 and with state law, the District Court interposed itself into the § 5 approval process in a way that the statute does not contemplate. Cf., *e. g., Upham* v. *Seamon,* 456 U. S. 37, 42–43 *(per curiam).* Pp. 20–25.

Reversed and remanded.

O'CONNOR, J., delivered the opinion for a unanimous Court.

Joaquin G. Avila argued the cause for appellants. With him on the briefs were *Robert Rubin, Anthony Chavez, Antonia Hernández,* and *Richard M. Pearl.*

Alan Jenkins argued the cause for the United States as *amicus curiae* urging reversal. With him on the briefs were *Solicitor General Days, Assistant Attorney General Patrick, Deputy Solicitor General Bender, Steven H. Rosenbaum,* and *Eileen Penner.*

Daniel G. Stone, Deputy Attorney General of California, argued the cause for appellees. With him on the brief for state appellees were *Daniel E. Lungren,* Attorney General, *Floyd D. Shimomura,* Senior Assistant Attorney General, and *Linda A. Cabatic,* Supervising Deputy Attorney General.*

JUSTICE O'CONNOR delivered the opinion of the Court.

This appeal presents a challenge to an order by a three-judge District Court for the Northern District of California that authorized Monterey County to conduct judicial elections under an election plan that has not received federal approval pursuant to § 5 of the Voting Rights Act.

I

The State of California has 58 counties, one of which is Monterey County (hereinafter County). In 1971, the Attorney General designated the County a covered jurisdiction under § 4(b) of the Voting Rights Act of 1965, 79 Stat. 438, as amended, 42 U. S. C. § 1973b(b). 36 Fed. Reg. 5809 (1971); see 28 CFR pt. 51, App. (1995). As a result, the County became subject to the federal preclearance requirements set forth in § 5 of the Voting Rights Act, 42 U. S. C. § 1973c.

**Sidney S. Rosdeitcher, Paul C. Saunders, Norman Redlich, Barbara R. Arnwine, Thomas J. Henderson, Brenda Wright, Samuel L. Walters, Laughlin McDonald, Neil Bradley, Steven R. Shapiro, Elaine R. Jones, Norman J. Chachkin,* and *Jacqueline A. Berrien* filed a brief for the American Civil Liberties Union et al. as *amici curiae* urging reversal.

Sharon L. Browne and *Deborah J. La Fetra* filed a brief for the Pacific Legal Foundation as *amicus curiae* urging affirmance.

Barbara McDowell and *Elwood G. Lui* filed a brief for the California Judges Association as *amicus curiae.*

Section 5 governs changes in voting procedures, with the purpose of preventing jurisdictions covered by its requirements from enacting or seeking to administer voting changes that have a discriminatory purpose or effect. As a jurisdiction covered by §5, Monterey County must obtain federal preclearance—either administrative or judicial—of any voting practice different from the practices in effect on November 1, 1968. To obtain administrative preclearance of a changed voting practice, a covered jurisdiction submits the enactment to the Attorney General of the United States. If the Attorney General does not formally object to the new procedure within 60 days of submission, the jurisdiction may enforce the legislation. A covered jurisdiction may also obtain judicial preclearance—either directly or after the Attorney General has objected to the voting change—by securing in the United States District Court for the District of Columbia a declaratory judgment that the new practice "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . . ." *Ibid.*

On November 1, 1968, the County had nine inferior court districts. Two of these districts were municipal court districts, each served by two judges, and the other seven were justice court districts, each served by a single judge. Both municipal and justice courts were trial courts of limited jurisdiction. Municipal courts served districts with populations exceeding 40,000, and justice courts served those districts with smaller populations. The justice courts differed from the municipal courts in other respects. They were not courts of record and were served by judges who often worked part time and did not have to be members of the bar. Comment, Trial Court Consolidation in California, 21 UCLA L. Rev. 1081, 1086 (1974). (On January 1, 1990, however, a state constitutional amendment specified that all courts, including justice courts, were courts of record. Cal. Const., Art. VI, § 1 (1988). A few years later, California voters eliminated justice courts altogether. Art. VI, §§ 1, 5(b).)

Each of the municipal and justice courts operated separately and independently. Judges for each court were elected at large by the voters of their respective districts, and they served only the judicial district in which they were elected. The municipal and justice court districts varied widely in population and judicial workloads. For example, a 1972 survey showed that the Monterey-Carmel Municipal Court District had a population of 106,700, with more than enough work for two full-time judges. By contrast, the San Ardo Justice Court District had a population of 3,500, with a caseload that required less than a quarter of one judge's time.

Between 1972 and 1983, the County adopted six ordinances, which ultimately merged the seven justice court districts and the two municipal court districts into a single, countywide municipal court, served by nine judges whom County residents elected at large. (At present, 10 judges serve on the municipal court.) Each judge was elected to serve for a term of six years. Judicial elections were conducted under various interim schemes in 1974, 1976, 1978, and 1982. Additionally, the County conducted at-large, countywide judicial elections in 1986, 1988, and 1990.

The County's reorganization of its inferior court system took place against a backdrop of state laws governing the general administration and organization of state courts. State law authorizes a county board of supervisors, "[a]s public convenience requires, . . . [to] divide the county into judicial districts for the purpose of electing judges . . . ." Cal. Govt. Code Ann. § 71040 (West 1976). The board also "may change district boundaries and create other districts." *Ibid.;* see also Cal. Govt. Code Ann. § 25200 (West 1988) ("The board of supervisors may divide the county into election . . . and other districts required by law, change their boundaries, and create other districts, as convenience requires"). A county's judicial election scheme must comply with several state constitutional and statutory requirements. Municipal court districts must include at least 40,000 residents, Cal. Const., Art. VI, § 5(a); cities may not be split into more than one judicial district, *ibid.;* Cal. Govt. Code Ann. § 71040 (West 1976); municipal court judges must be residents of the judicial district to which they are elected or appointed, § 71140; and, according to the State, judges' jurisdictional and electoral bases must be coextensive, Cal. Const., Art. VI, § 16(b); *Koski* v. *James*, 47 Cal. App. 3d 349, 354, 120 Cal. Rptr. 754, 758 (1975).

In addition to these generally applicable laws, the state legislature has enacted various pieces of legislation directed at the judicial systems of particular California counties, including laws aimed specifically at Monterey County's judicial system. Cal. Govt. Code Ann., Tit. 8, ch. 10 (West 1993). Some of these laws have reflected changes in the County's judicial districts resulting from the consolidation process.* The State has also enacted legislation dealing with the administration of the County's judicial system, such as appoint-

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*See, *e. g.*, 1953 Cal. Stats., ch. 206, § 2 ("This article applies to the municipal court established in a district embracing the Cities of Carmel and Monterey"); 1975 Cal. Stats., ch. 966, § 2 ("This article applies only to municipal courts established in . . . [a] district embracing the Cities of Monterey, Carmel, Seaside, Sand City, and Del Rey Oaks designated as the Monterey-Carmel Judicial District; [and a] district embracing the City of Salinas designated as the Salinas Judicial District"); 1977 Cal. Stats., ch. 995, § 1 ("This article applies to all of the municipal courts established in the County of Monterey, which are in judicial districts entitled as follows: the Monterey Peninsula Judicial District, the Salinas Judicial District, and the North Monterey County Judicial District"); 1979 Cal. Stats., ch. 694, § 2 ("There is in the County of Monterey, on and after the effective date of this section, a single municipal court district which embraces the former Salinas Judicial District, Monterey Peninsula Judicial District and North Monterey County Judicial District"); 1989 Cal. Stats., ch. 608, § 1 (codified at Cal. Govt. Code Ann. § 73560 (West 1993)) ("This article applies to the Monterey County Municipal Court District, which encompasses the entire County of Monterey").

ment and compensation of court personnel. Cal. Govt. Code Ann. §§ 73564–73569 (West 1993).

Although it was subject to § 5 preclearance requirements, the County did not submit any of the consolidation ordinances for federal preclearance under § 5. The State, however, in 1983 submitted for administrative preclearance a state law, 1983 Cal. Stats., ch. 1249, that mentioned Monterey County's prospective consolidation of the last two justice court districts with the remaining municipal court district. The Department of Justice requested additional information concerning this aspect of the state legislation. In its response, the State included the last of the County's six consolidation ordinances, which was adopted in 1983. The Attorney General interposed no objection to the 1983 state law. The State's submission may well have served to preclear the 1983 county ordinance. See 28 CFR § 51.14(2) (1981); 28 CFR § 51.15(a) (1987). The United States points out, however, that the 1983 submission to the Department of Justice did not identify or describe any of the County's previous consolidation ordinances. The State does not contest this point. Thus, under our precedent, these previous consolidation ordinances do not appear to have received federal preclearance approval. *Clark* v. *Roemer,* 500 U. S. 646, 657–658 (1991); *McCain* v. *Lybrand,* 465 U. S. 236, 249 (1984).

On September 6, 1991, appellants, five Hispanic voters residing in the County, sued the County in the United States District Court for the Northern District of California, alleging that the County had violated § 5 by failing to obtain federal preclearance of the six judicial district consolidation ordinances it had adopted between 1972 and 1983. They raised no claim under § 2 of the Voting Rights Act or constitutional challenge. A three-judge District Court was convened. On March 31, 1993, the District Court ruled that the challenged ordinances were election changes subject to § 5 and consequently unenforceable without federal preclearance. The District Court directed the County to submit the ordinances to federal officials for preclearance. It also denied the County's motion to join the State as an indispensable party under Federal Rule of Civil Procedure 19(b), finding that the State had no legally protected interest in the outcome of the action.

In August 1993, the County filed a declaratory judgment action in the United States District Court for the District of Columbia, seeking judicial preclearance of the challenged ordinances. Appellants intervened. But before that court made any findings, the County voluntarily dismissed its action, without prejudice. The County and appellants subsequently stipulated that the County was "'unable to establish that the [consolidation ordinances] adopted by the County between 1968 and 1983 did not have the effect of denying the right to vote to Latinos in Monterey County due to the retrogressive effect several of these ordinances had on Latino voting strength . . . .'" 871 F. Supp. 1254, 1256 (N. D. Cal. 1994). The parties thereupon returned to the three-judge District Court, and several years of litigation ensued.

In essence, the County and appellants ceased to litigate the case as adversaries. Instead, they embarked on a joint attempt, opposed by the State and others as intervenors, to persuade the District Court to order a judicial election plan they viewed as less retrogressive than an at-large, countywide election scheme. In late 1993 and early 1994, the County and appellants jointly proposed two plans to the District Court. Each plan divided the County into different election areas, with judges from each area to serve on the countywide municipal court. The State objected to these schemes on the ground that they contravened California law, including the constitutional requirements that a judge's jurisdictional and electoral bases be coextensive, Cal. Const., Art. VI, § 16(b), and that cities not be split into more than one judicial district, Art. VI, § 5(a). Appellants and the County acknowledged these conflicts, but asked the District

Court to suspend operation of these state constitutional provisions in the County.

For some time, the District Court was reluctant to implement either of the proposed plans, ruling that it was "not satisfied that a plan necessarily ha[s] to conflict with [Article VI, § 16(b) in order to meet the requirements of] the Voting Rights Act." 871 F. Supp., at 1256. Finally, the County and appellants filed with the District Court a stipulation that the County could not "'devise or prepare any plan for the election of municipal court judges in Monterey County that [did] not conflict with at least one state law and still compl[ied] with the Voting Rights Act.'" *Id.*, at 1257. The parties supported the stipulation with information on County demographics, the presence of politically cohesive Hispanic communities and Anglo bloc voting, and a legacy of discrimination that had affected Hispanic citizens' right to vote. They also set forth a number of potential election plans that they believed complied with § 5, all of which violated some aspect of state law.

In June 1994, the District Court decided to give appellants, the County, the State, and the United States, which had at this point weighed in as *amicus curiae*, another chance to develop a workable solution. It enjoined the upcoming 1994 elections. It directed the County to attempt to obtain changes in state law that would permit the implementation of a judicial election plan that complied with § 5 requirements. It asked the State to assist the County in creating an acceptable judicial election plan. Nevertheless, in late 1994, the parties were back in court, still without a satisfactory plan. The County had sought amendments to the State Constitution and statutes, but was unsuccessful.

In a December 20, 1994, order, the District Court concluded that it had to devise a remedy that would permit judicial elections to take place, pending implementation of a permanent, federally precleared voting plan. Otherwise, voters would be deprived of their right to elect judges. The

District Court recognized that neither appellants nor the County thought feasible a return to the election scheme in effect on November 1, 1968. Instead, it decided to adopt one of the plans the County and appellants previously had proposed. Under this scheme, the County was divided into four election districts. Voters in three of the districts, in which Hispanics constituted a majority, would each elect one judge. Voters in the fourth district would elect the other seven judges. Judges elected under the plan would serve for 18-month terms, until January 1997. All 10 judges would serve on the countywide municipal court. The District Court acknowledged that the interim plan was inconsistent with state law, but reasoned that the intrusion on state interests was minimal. The County submitted the interim plan to the Attorney General for preclearance, and it was precleared on March 6, 1995. In a special election conducted on June 6, 1995, seven judges were elected. (Apparently, terms of three of the judges holding seats in the seven-member election district had not expired by June 1995.)

Shortly after the June 1995 special election, this Court issued its decision in *Miller* v. *Johnson*, 515 U. S. 900 (1995), which prompted the three-judge District Court to reconsider the soundness of its interim election plan. *Miller*, ruled the District Court, cast "substantial doubt" on the constitutionality of its previous order, "as that plan used race as a significant factor in dividing the County into election areas." App. 167. Without ruling that the interim plan was in fact unconstitutional, the District Court decided to change course. It denied the County's request to extend the terms of judges elected in the 1995 special election, concerned that such an extension would be "inappropriate" in light of the possible constitutional infirmity of the interim plan. A return to the judicial election system in existence before the adoption of the consolidation ordinances was not "legal, feasible or desired." *Ibid.* In the District Court's view, its only option was to order the County to conduct an at-large, countywide judicial election in March 1996, while enjoining future elections pending preclearance of a permanent plan. Judges elected in 1996 would serve for the usual 6-year terms. The District Court also joined the State as an indispensable party, based on the State's argument that the County was doing nothing more than administering a state statute that required countywide elections, rather than administering its own county ordinance. Thus, in essence, four years after the filing of the complaint in this case, the District Court ordered the County to hold elections under the very same scheme that appellants originally challenged under § 5 as unprecleared.

On January 22, 1996, appellants filed an emergency application in this Court to enjoin the 1996 elections pending appeal. We granted the application on February 1, 516 U. S. 1104 (1996), and noted probable jurisdiction on April 1, 517 U. S. 1118 (1996).

II

A

Section 5 of the Voting Rights Act applies whenever a covered jurisdiction "enact[s] or seek[s] to administer any . . . standard, practice, or procedure" different from that in force on the date of § 5 coverage. As a threshold matter, the State contends that, although the County perhaps should have submitted the consolidation ordinances to federal authorities before implementing them, intervening changes in California law have transformed the County's judicial election scheme into a state plan. Therefore, asserts the State, the County is not administering County consolidation ordinances in conducting municipal court elections, but is merely implementing California law, for which § 5 preclearance is not needed. The District Court was "not persuaded" by this argument, but ruled that the State could continue to seek to show that the County was merely administering California law. See

Cal. Govt. Code Ann. § 71040 (West 1976); see also Cal. Govt. Code Ann. § 25200 (West 1988). We leave this issue about the scope of § 5 to the District Court to resolve on remand.

The State raises other threshold issues that the District Court did not have the opportunity to address. The State contends that appellants' suit was barred by laches; that it is constitutionally improper to designate the County a covered jurisdiction under § 5; and that the consolidation ordinances did not alter a voting "standard, practice, or procedure" subject to § 5 preclearance. We express no view on these claims, leaving it to the District Court to decide them in the first instance.

B

A jurisdiction subject to § 5's requirements must obtain either judicial or administrative preclearance before implementing a voting change. No new voting practice is enforceable unless the covered jurisdiction has succeeded in obtaining preclearance. *Clark* v. *Roemer,* 500 U. S., at 652–653; *McDaniel* v. *Sanchez,* 452 U. S. 130, 137 (1981); *Connor* v. *Waller,* 421 U. S. 656 (1975) *(per curiam).* If a voting change subject to § 5 has not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting implementation of the change. *Clark* v. *Roemer, supra,* at 652–653 (citing *Allen* v. *State Bd. of Elections,* 393 U. S. 544, 572 (1969)). The District Court's order that the County conduct elections under the unprecleared, at-large judicial election plan conflicts with these principles and with our decision in *Clark* v. *Roemer, supra.*

Clark concerned the propriety of a three-judge District Court's refusal to enjoin elections under an unprecleared Louisiana judicial election plan. There, Louisiana had not submitted for preclearance a number of statutory and constitutional voting changes relating to elections of state judges, many of which were adopted in the late 1960's and 1970's. *Id.,* at 649. The District Court nonetheless permitted elections to go forward, with the winners allowed to take office if Louisiana filed a judicial preclearance action within 90 days. *Id.*, at 651. We held that the District Court erred in authorizing these elections in the absence of preclearance, pointing out that although Louisiana had been aware for at least three years that the judgeships were not precleared, it had still failed to file for judicial preclearance. *Id.*, at 655.

We acknowledged in *Clark* that earlier decisions such as *Perkins* v. *Matthews*, 400 U. S. 379 (1971), and *Berry* v. *Doles*, 438 U. S. 190 (1978) *(per curiam)*, held that where a covered jurisdiction had already conducted elections under an unprecleared plan, it might be appropriate for the district court to afford local officials an opportunity to seek federal approval before ordering a new election. 500 U. S., at 654. But those cases raised an issue different from the one in *Clark*. In *Perkins* and *Berry*, the District Courts confronted the question whether to set aside illegal elections that had already taken place. By contrast, the District Court in *Clark* had to decide whether to allow illegal elections to go forward in the first place. In this situation, "§ 5's prohibition against implementation of unprecleared changes required the District Court to enjoin the election." 500 U. S., at 654.

The District Court faced fundamentally the same problem here as in *Clark*. The County did not preclear the ordinances as required by § 5. For several years, the County had been on notice that its electoral changes were subject to § 5's preclearance requirements, yet it never obtained judicial or administrative preclearance of the consolidation ordinances. In *Clark*, we left open the question whether a district court may ever deny a § 5 plaintiff's motion for an injunction and allow a covered jurisdiction to conduct an election under an unprecleared voting plan. We suggested that "[a]n extreme circumstance might be present if a seat's unprecleared status is not drawn to the attention of the [covered jurisdiction] until the eve of the election and there are equitable principles that justify allowing the election to proceed." *Id.*, at 654–655. We found no such exigency to exist in *Clark*, and we find none here.

The State contends that there is a difference between a district court's failing to enjoin an unprecleared election scheme—the situation in *Clark*—and its ordering, pursuant to its equitable remedial authority, an election under an unprecleared plan. Regardless whether this distinction is meaningful, it does not advance the argument that the County's judicial elections may be held without § 5 preclearance. We have recognized, at least in cases raising claims under the Fourteenth Amendment, that § 5 preclearance requirements may not apply where a district court independently crafts a remedial electoral plan. *McDaniel* v. *Sanchez, supra,* 148–150 (quoting S. Rep. No. 94–295, pp. 18–19 (1975)). But where a court adopts a proposal "reflecting the policy choices . . . of the people [in a covered jurisdiction] . . . the preclearance requirement of the Voting Rights Act is applicable." 452 U. S., at 153. The at-large, countywide system under which the District Court ordered the County to conduct elections undoubtedly "reflect[ed] the policy choices" of the County; it was the same system that the County had adopted in the first place. It was, therefore, error for the District Court to order elections under that system before it had been precleared by either the Attorney General or the United States District Court for the District of Columbia.

We appreciate the predicament that the District Court faced. The County did not submit the consolidation ordinances for preclearance when they were adopted many years ago, and the District Court concluded that changes have occurred in the intervening years that make unrealistic a return to the judicial election plan of 1968, now nearly 30 years old. Since there may be no practical way to go back to the 1968 plan, simply enjoining the elections would leave the County without a judicial election system. The County and appellants seem unable to fashion an election plan that does not contravene the California Constitution, and the State has vigorously opposed each of the parties' proposals as violative of state law.

These complications do not, however, change the basic nature of the § 5 preclearance process. Congress designed the preclearance procedure "to forestall the danger that local decisions to modify voting practices will impair minority access to the electoral process." *McDaniel*, 452 U. S., at 149 (footnote omitted). Congress chose to accomplish this purpose by giving exclusive authority to pass on the discriminatory effect or purpose of an election change to the Attorney General and to the District Court for the District of Columbia. As we explained in *McDaniel*, "[b]ecause a large number of voting changes must necessarily undergo the preclearance process, centralized review enhances the likelihood that recurring problems will be resolved in a consistent and expeditious way." *Id.*, at 151 (footnote omitted). Once a covered jurisdiction has complied with these preclearance requirements, § 5 provides no further remedy. *Allen* v. *State Bd. of Elections*, 393 U. S., at 549–550.

This congressional choice in favor of specialized review necessarily constrains the role of the three-judge district court. On a complaint alleging failure to preclear election changes under § 5, that court lacks authority to consider the discriminatory purpose or nature of the changes. *Perkins* v. *Matthews*, *supra*, at 385 ("What is foreclosed to such district court is what Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General—the determination whether a covered change does or does not have the purpose or effect 'of denying or abridging the right to vote on account of race or color'"). The three-judge district court may determine only whether § 5 covers a contested change, whether § 5's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, is appropriate. See *City of Lockhart* v. *United States*, 460 U. S. 125, 129, n. 3 (1983); *United States* v. *Board of Supervisors of Warren Cty.*, 429 U. S. 642, 645–647 (1977) *(per curiam); Perkins, supra,* at 385; *Allen, supra,* at 558–559. The goal of a three-judge district court facing a § 5 challenge must be to ensure that the covered jurisdiction submits its election plan to the appropriate federal authorities for preclearance as expeditiously as possible.

In this case, nearly five years after appellants brought their challenge, neither the Attorney General nor the District Court for the District of Columbia has yet made any findings regarding the retrogressive effect—or lack thereof—of the consolidation ordinances adopted between 1972 and 1983. The County dismissed its declaratory judgment action before the District Court for the District of Columbia made any findings, and it has never submitted the consolidation ordinances to the Attorney General for review. Although the District Court initially ordered the County to obtain preclearance of the ordinances, when the County failed to follow through, the District Court did not enforce its order.

The District Court itself holds some responsibility for protracting this litigation. Because of its concern that the judicial election plans proposed by the County and appellants unnecessarily conflicted with California law, the District Court several times ordered the parties to submit to it an election plan that complied both with § 5's substantive requirements and with state law, before the County submitted the plan to federal officials. In so doing, it interposed itself into the § 5 approval process in a way that the statute does not contemplate. Cf. *Upham* v. *Seamon*, 456 U. S. 37, 42–43 (1982) *(per curiam); United States* v. *Board of Supervisors of Warren Cty., supra,* at 645–647; *Perkins,* 400 U. S., at 385. In their briefs, both parties raise detailed arguments regarding the effect of the consolidation ordinances on the County's minority voters, but § 5 requires either the Attorney General or the District Court for the District of Columbia to resolve in the first instance whether the consolidated municipal court system is retrogressive compared to the system existing in 1968.

The County has not discharged its obligation to submit its voting changes to either of the forums designated by Congress. The requirement of federal scrutiny should be satisfied without further delay. See *Berry* v. *Doles*, 438 U. S., at 192. The State appears willing to assist the County in pursuing the issue before either the Attorney General or the District Court for the District of Columbia, and its effort will doubtless be of assistance.

The judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

IMMIGRATION AND NATURALIZATION SERVICE *v.* YUEH-SHAIO YANG

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 95–938. Argued October 15, 1996—Decided November 13, 1996

Respondent and his wife, former Taiwan residents, executed elaborate fraudulent schemes to gain entry to the United States and, later, to obtain citizenship for respondent. While respondent's naturalization application was pending, the Immigration and Naturalization Service (INS) learned of his unlawful entry and issued an order to show cause why he should not be deported as excludable at the time of entry. He conceded that he was deportable and filed a request for a waiver of deportation under 8 U. S. C. § 1251(a)(1)(H). In affirming the Immigration Judge's denial of this request, the Board of Immigration Appeals concluded that respondent was statutorily eligible for a waiver, but denied it as a matter of discretion. In vacating and remanding for further proceedings, the Ninth Circuit held that the Board abused its discretion by considering as adverse factors, first, respondent's participation in his wife's fraudulent entry and, second, his fraudulent naturalization application. The court reasoned that his acts in the former regard were "inextricably intertwined" with his own efforts to secure entry and must be considered part of the initial fraud, while his application must be considered an "extension" of that initial fraud.

Held: In deciding whether to grant a waiver under § 1251(a)(1)(H), the Attorney General (or her delegate, the INS) may take into account acts of fraud committed by the alien in connection with his entry into the United States. The relevant statutory language establishes certain prerequisites to eligibility for a waiver, but imposes no limitations on the factors that the INS may consider in determining who, among the class of eligible aliens, should be granted relief. Cf., *e. g., Jay* v. *Boyd,* 351 U. S. 345, 354. Although it is the INS's settled policy to disregard entry fraud, no matter how egregious, in making the waiver determination, that policy is the INS's own invention and is not required by the statutory text. Moreover, the INS has not abused its discretion by arbitrarily disregarding its policy here; it has merely taken a narrow view of what constitutes "entry fraud." It is assuredly rational, and therefore lawful, to distinguish aliens such as respondent who engage in a pattern of immigration fraud from aliens who commit a single, isolated act of misrepresentation. Pp. 29–32.

58 F. 3d 452, reversed.

SCALIA, J., delivered the opinion for a unanimous Court.

Beth S. Brinkmann argued the cause for petitioner. With her on the briefs were *Solicitor General Days, Acting Solicitor General Dellinger, Assistant Attorney General Hunger,* and *Deputy Solicitor General Kneedler.*

Howard Hom argued the cause for respondent. With him on the brief were *Robert L. Reeves, Franklin W. Nelson,* and *Bill Ong Hing.**

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether the Attorney General, when deciding whether to grant a discretionary waiver of deportation under the applicable provision of the Immigration and Nationality Act (INA), 95 Stat. 1616, as amended, 8 U. S. C. § 1251(a)(1)(H), may take into account acts of fraud committed by the alien in connection with his entry into the United States.

Respondent Yueh-Shaio Yang and his wife, Hai-Hsia Yang, were born and married in the People's Republic of China, and subsequently moved to Taiwan. In order to gain entry to the United States, they executed the following scheme: After divorcing respondent in Taiwan, Hai-Hsia traveled to the United States in 1978 and, using $60,000 provided by respondent, obtained a fraudulent birth certificate and passport in the name of Mary Wong, a United States citizen. Respondent then remarried Hai-Hsia in Taiwan under her false identity and fraudulently obtained an immigrant visa to enter the United States as the spouse of a United States citizen. In 1982, four years after his fraudulent entry, respondent submitted an application for naturalization, which fraudulently stated that his wife "Mary" was a United States citizen by birth and that respondent had been lawfully admitted for permanent residence. In 1985, while respondent's naturalization application was still pending, respondent and his wife obtained another divorce in order to permit her to obtain a visa under her true name (as the relative of a daughter who had obtained United States citizenship).

**Daniel J. Popeo* and *David A. Price* filed a brief for the Washington Legal Foundation as *amicus curiae* urging reversal.

Sandra E. Kupelian filed a brief for the American Immigration Lawyers Association et al. as *amici curiae* urging affirmance.

The Immigration and Naturalization Service (INS) ultimately learned of respondent's unlawful entry, and in 1992 issued an order to show cause why he should not be deported. The INS maintained that respondent was deportable under 8 U. S. C. § 1251(a)(1)(A), because he was excludable from the United States at the time of entry under the former 8 U. S. C. §§ 1182(a)(14), (19), and (20) (1988 ed.). Respondent conceded that he was deportable and filed a request for a waiver of deportation under § 1251(a)(1)(H). The Board of Immigration Appeals affirmed the Immigration Judge's denial of this request. The Board concluded that respondent was statutorily eligible for a waiver, but denied it as a matter of discretion. Although the Board did not consider respondent's fraudulent entry in 1978 as itself an adverse factor, it did consider, among other things, respondent's "acts of immigration fraud before and after his 1978 entry into the United States," App. to Pet. for Cert. 10a, including his first sham divorce to facilitate his wife's unlawful entry, his 1982 application for naturalization, and his second sham divorce to assist his wife in obtaining an immigrant visa under her real name.

The Court of Appeals for the Ninth Circuit granted respondent's petition for review, vacated the Board's decision, and remanded the case for further proceedings. *Yang* v. *INS*, 58 F. 3d 452 (1995). The Ninth Circuit held that the Board abused its discretion by considering as an adverse factor respondent's participation in his wife's fraudulent entry, because those acts were "inextricably intertwined with Mr. Yang's own efforts to secure entry into the country and must be considered part of the initial fraud." *Id.*, at 453. The Ninth Circuit also concluded that the Board improperly considered respondent's fraudulent application for naturalization as an adverse factor because that application "must be considered an extension of the initial fraud." *Ibid.* We granted certiorari. 516 U. S. 1110 (1996).[1]

Section 1251(a)(1)(H) provides, in relevant part, as follows:

> "The provisions of this paragraph relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens described in section 1182(a)(6)(C)(i) of this title [who have obtained a visa, documentation, entry or INA benefit by fraud or misrepresentation] . . . may, in the discretion of the Attorney General, be waived for any alien . . . who—
>
> "(i) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and
>
> "(ii) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such entry except for those grounds of inadmissibility specified under paragraphs (5)(A) and (7)(A) of section 1182(a) of this title [relating to possession of valid labor certifications, immigrant visas and entry documents] which were a direct result of that fraud or misrepresentation."[2]

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[1] Our jurisdiction over this matter is not in question. See 5 U. S. C. § 702. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRA), Div. C., Department of Defense Appropriations Act, 1997, Pub. L. 104–208, 110 Stat. 3009, provides that "[n]otwithstanding any other provision of law, no court shall have jurisdiction to review . . . any . . . decision or action of the Attorney General the authority for which is specified under [Title 8 U. S. C.] to be in the discretion of the Attorney General . . . ." IIRA § 306(a). That provision does not take effect, however, until April 1, 1997. See IIRA §§ 306(c)(1), 309(a) (as amended by Pub. L. 104–302, § 2, 110 Stat. 3656).

[2] The last clause of the quoted provision is less than artfully drawn, since the phrase "that fraud or misrepresentation" has no apparent antecedent. The antecedent was unmistakable in the prior version of the provision,

The meaning of this language is clear. While it establishes certain prerequisites to eligibility for a waiver of deportation, it imposes no limitations on the factors that the Attorney General (or her delegate, the INS, see 8 CFR §2.1 (1996)) may consider in determining who, among the class of eligible aliens, should be granted relief. We have described the Attorney General's suspension of deportation under a related and similarly phrased provision of the INA as "'an act of grace'" which is accorded pursuant to her "unfettered discretion," *Jay* v. *Boyd*, 351 U. S. 345, 354 (1956) (quoting *Escoe* v. *Zerbst*, 295 U. S. 490, 492 (1935)), and have quoted approvingly Judge Learned Hand's likening of that provision to "'a judge's power to suspend the execution of a sentence, or the President's to pardon a convict,'" 351 U. S., at 354, n. 16 (quoting *United States ex rel. Kaloudis* v. *Shaughnessy*, 180 F. 2d 489, 491 (CA2 1950)).

Respondent contends, however, that the portion of §1251(a)(1)(H)(ii) requiring the alien to be "otherwise admissible"—that is, not excludable on some ground other than the entry fraud—precludes the Attorney General from considering the alien's fraudulent entry at all. The text will not bear such a reading. Unlike the prior version of the waiver-of-deportation statute at issue in *INS* v. *Errico*, 385 U. S. 214 (1966), under which the Attorney General had no discretion to deny a waiver if the statutory requirements were met, satisfaction of the requirements under §1251(a)(1)(H), includ-

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which, in its prologue, authorized waiver of deportation "on the ground that [the aliens] were excludable at the time of entry as aliens who have sought to procure or have procured visas or other documentation, or entry into the United States, by fraud or misrepresentation." 8 U. S. C. §1251(f) (1988 ed.). In the prologue of the current provision, that explicit (but lengthy) reference to fraud or misrepresentation has been replaced by citation of §1182(a)(6)(C)(i), which uses almost the same language to define a class of excludable aliens. We think it if not obvious, then at least inevitable, that the phrase "that fraud or misrepresentation" refers to the fraud or misrepresentation for which waiver is sought, alluded to, through citation of §1182(a)(6)(C)(i), in the prologue.

ing the requirement that the alien have been "otherwise admissible," establishes only the alien's *eligibility* for the waiver. Such eligibility in no way limits the considerations that may guide the Attorney General in exercising her discretion to determine who, among those eligible, will be accorded grace. It could be argued that if the Attorney General determined that *any* entry fraud or misrepresentation, no matter how minor and no matter what the attendant circumstances, would cause her to withhold waiver, she would not be exercising the conferred discretion at all, but would be making a nullity of the statute. But that is a far cry from respondent's argument that *all* entry fraud must be excused, which is untenable.

Respondent asserts (and the United States acknowledges) that it is the settled policy of the INS to disregard entry fraud or misrepresentation, no matter how egregious, in making the waiver determination. See *Delmundo* v. *INS*, 43 F. 3d 436, 440 (CA9 1994). This is such a generous disposition that it may suggest a belief on the part of the agency that the statute requires it; and such a belief is also suggested by the INS's frequent concessions in litigation that the underlying fraud for which the alien is deportable "should not be considered as an adverse factor in the balancing equation," *Liwanag* v. *INS*, 872 F. 2d 685, 687 (CA5 1989); see also *Braun* v. *INS*, 992 F. 2d 1016, 1020 (CA9 1993); *Start* v. *INS*, 803 F. 2d 539, 542 (CA9 1986), withdrawn, 862 F. 2d 787 (1988). (Such concessions were facilitated, no doubt, by the Ninth Circuit's frequent intimations that the statute forbade consideration of the initial fraud. See *Hernandez-Robledo* v. *INS*, 777 F. 2d 536, 541 (1985); see also *Braun*, *supra*, at 1020; *Delmundo*, *supra*, at 441.) Before us, however, the United States disclaims such a position—and even if that *were* the agency's view we could not permit it to overcome the unmistakable text of the law. See *MCI Telecommunications Corp.* v. *American Telephone & Telegraph Co.*, 512 U. S. 218, 229–230 (1994). But that does not render the

INS's practice irrelevant. Though the agency's discretion is unfettered at the outset, if it announces and follows—by rule or by settled course of adjudication—a general policy by which its exercise of discretion will be governed, an irrational departure from that policy (as opposed to an avowed alteration of it) could constitute action that must be overturned as "arbitrary, capricious, [or] an abuse of discretion" within the meaning of the Administrative Procedure Act, 5 U. S. C. § 706(2)(A). The INS has not, however, disregarded its general policy here; it has merely taken a narrow view of what constitutes "entry fraud" under that policy, excluding events removed in time and circumstance from respondent's entry: his preentry and postentry sham divorces, and the fraud in his 1982 application for naturalization. The "entry fraud" exception being, under the current statute, a rule of the INS's own invention, the INS is entitled, within reason, to define that exception as it pleases. The Ninth Circuit held that the acts of fraud counted against respondent can be described as "inextricably intertwined" with, or an "extension" of, the fraudulent entry itself because they were essential to its ultimate success or concealment. Perhaps so, but it is up to the Attorney General whether she will adopt an "inextricably intertwined" or "essential extension" augmentation of her "entry fraud" exception. It is assuredly rational, and therefore lawful, for her to distinguish aliens such as respondent who engage in a pattern of immigration fraud from aliens who commit a single, isolated act of misrepresentation.

The judgment of the Court of Appeals for the Ninth Circuit is reversed.

It is so ordered.

OHIO *v.* ROBINETTE

CERTIORARI TO THE SUPREME COURT OF OHIO

No. 95–891. Argued October 8, 1996—Decided November 18, 1996

After an Ohio deputy sheriff stopped respondent Robinette for speeding, gave him a verbal warning, and returned his driver's license, the deputy asked whether he was carrying illegal contraband, weapons, or drugs in his car. Robinette answered "no" and consented to a search of the car, which revealed a small amount of marijuana and a pill. He was arrested and later charged with knowing possession of a controlled substance when the pill turned out to be methylenedioxymethamphetamine. Following denial of his pretrial suppression motion, he was found guilty, but the Ohio Court of Appeals reversed on the ground that the search resulted from an unlawful detention. The State Supreme Court affirmed, establishing as a bright-line prerequisite for consensual interrogation under these circumstances the requirement that an officer clearly state when a citizen validly detained for a traffic offense is "legally free to go."

Held:

1. This Court has jurisdiction to review the Ohio Supreme Court's decision. The contention that jurisdiction is lacking because the Ohio decision rested in part upon the State Constitution is rejected under *Michigan* v. *Long,* 463 U. S. 1032, 1040–1041. Although the opinion below mentions the Ohio Constitution in passing, it clearly relies on federal law, discussing and citing federal cases almost exclusively. It is not dispositive that those citations appear only in the opinion and not in the official syllabus. Under *Zacchini* v. *Scripps-Howard Broadcasting Co.,* 433 U. S. 562, 566, it is permissible to turn to an Ohio opinion's body when the syllabus speaks only in general terms of "the federal and Ohio Constitutions." Nor is the Court's jurisdiction defeated by the additional holding below that continuing detention of a person stopped for a traffic violation constitutes an illegal seizure when the officer's motivation for continuing is not related to the purpose of the original, constitutional stop and there are no articulable facts giving rise to a suspicion of some separate illegal activity. Under *Whren* v. *United States,* 517 U. S. 806, 813, the officer's subjective intentions do not make continued detention illegal, so long as the detention is justified by the circumstances viewed objectively. Pp. 36–39.

2. The Fourth Amendment does not require that a lawfully seized defendant be advised that he is "free to go" before his consent to search

will be recognized as voluntary. The Amendment's touchstone is reasonableness, which is measured in objective terms by examining the totality of the circumstances. In applying this test, the Court has consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry. Indeed, in rejecting a *per se* rule very similar to one adopted below, this Court has held that the voluntariness of a consent to search is a question of fact to be determined from all the circumstances. *Schneckloth* v. *Bustamonte*, 412 U. S. 218, 248–249. The Ohio Supreme Court erred in holding otherwise. It would be unrealistic to require the police to always inform detainees that they are free to go before a consent to search may be deemed voluntary. Cf. *id.*, at 231. Pp. 39–40.

73 Ohio St. 3d 650, 653 N. E. 2d 695, reversed and remanded.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined. GINSBURG, J., filed an opinion concurring in the judgment, *post*, p. 40. STEVENS, J., filed a dissenting opinion, *post*, p. 45.

Carley J. Ingram argued the cause for petitioner. With her on the briefs was *Mathias H. Heck, Jr.*

Irving L. Gornstein argued the cause for the United States as *amicus curiae* urging reversal. On the brief were *Solicitor General Days, Acting Assistant Attorney General Keeney, Deputy Solicitor General Dreeben, Paul A. Engelmayer*, and *Joseph C. Wyderko.*

James D. Ruppert argued the cause and filed a brief for respondent.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Alabama et al. by *Betty D. Montgomery*, Attorney General of Ohio, *Jeffrey S. Sutton*, State Solicitor, and *Simon B. Karas*, and by the Attorneys General for their respective States as follows: *Jeff Sessions* of Alabama, *Daniel E. Lungren* of California, *Gale A. Norton* of Colorado, *M. Jane Brady* of Delaware, *Robert Butterworth* of Florida, *Margery S. Bronster* of Hawaii, *Alan G. Lance* of Idaho, *Jim Ryan* of Illinois, *Carla J. Stovall* of Kansas, *A. B. Chandler III* of Kentucky, *Richard P. Ieyoub* of Louisiana, *Andrew Ketterer* of Maine, *J. Joseph Curran, Jr.*, of Maryland, *Scott Harshbarger* of Massachusetts, *Frank J. Kelley* of Michigan, *Hubert H. Humphrey III* of Minnesota, *Mike Moore* of Mississippi, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

We are here presented with the question whether the Fourth Amendment requires that a lawfully seized defendant must be advised that he is "free to go" before his consent to search will be recognized as voluntary. We hold that it does not.

This case arose on a stretch of Interstate 70 north of Dayton, Ohio, where the posted speed limit was 45 miles per hour because of construction. Respondent Robert D. Robinette was clocked at 69 miles per hour as he drove his car along this stretch of road, and was stopped by Deputy Roger Newsome of the Montgomery County Sheriff's Office. Newsome asked for and was handed Robinette's driver's license, and he ran a computer check which indicated that Robinette had no previous violations. Newsome then asked Robinette to step out of his car, turned on his mounted video camera, issued a verbal warning to Robinette, and returned his license.

At this point, Newsome asked, "One question before you get gone: [A]re you carrying any illegal contraband in your

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of Nevada, *Jeffrey R. Howard* of New Hampshire, *Deborah T. Poritz* of New Jersey, *Dennis C. Vacco* of New York, *Michael F. Easley* of North Carolina, *W. A. Drew Edmondson* of Oklahoma, *Theodore Kulongoski* of Oregon, *Thomas W. Corbett, Jr.*, of Pennsylvania, *Jeffrey B. Pine* of Rhode Island, *Mark Bennett* of South Dakota, *Charles W. Bursen* of Tennessee, *Dan Morales* of Texas, *Jeffrey L. Amestoy* of Vermont, *James S. Gilmore III* of Virginia, *Darrell V. McGraw, Jr.*, of West Virginia, *James E. Doyle* of Wisconsin, and *William U. Hill* of Wyoming; and for Americans for Effective Law Enforcement, Inc., by *Fred E. Inbau, Wayne W. Schmidt, James P. Manak*, and *Bernard J. Farber.*

Tracey Maclin, Steven R. Shapiro, and *Jeffrey M. Gamso* filed a brief for the American Civil Liberties Union et al. as *amici curiae* urging affirmance.

Briefs of *amicus curiae* were filed for the National Association of Criminal Defense Lawyers by *Sheryl Gordon McCloud;* and for the Ohio Association of Criminal Defense Lawyers by *W. Andrew Hasselbach.*

car? Any weapons of any kind, drugs, anything like that?" App. to Brief for Respondent 2 (internal quotation marks omitted). Robinette answered "no" to these questions, after which Deputy Newsome asked if he could search the car. Robinette consented. In the car, Deputy Newsome discovered a small amount of marijuana and, in a film container, a pill which was later determined to be methylenedioxymethamphetamine (MDMA). Robinette was then arrested and charged with knowing possession of a controlled substance, MDMA, in violation of Ohio Rev. Code Ann. §2925.11(A) (1993).

Before trial, Robinette unsuccessfully sought to suppress this evidence. He then pleaded "no contest," and was found guilty. On appeal, the Ohio Court of Appeals reversed, ruling that the search resulted from an unlawful detention. The Supreme Court of Ohio, by a divided vote, affirmed. 73 Ohio St. 3d 650, 653 N. E. 2d 695 (1995). In its opinion, that court established a bright-line prerequisite for consensual interrogation under these circumstances:

> "The right, guaranteed by the federal and Ohio Constitutions, to be secure in one's person and property requires that citizens stopped for traffic offenses be clearly informed by the detaining officer when they are free to go after a valid detention, before an officer attempts to engage in a consensual interrogation. Any attempt at consensual interrogation must be preceded by the phrase 'At this time you legally are free to go' or by words of similar import." *Id.*, at 650–651, 653 N. E. 2d, at 696.

We granted certiorari, 516 U. S. 1157 (1996), to review this *per se* rule, and we now reverse.

We must first consider whether we have jurisdiction to review the Ohio Supreme Court's decision. Respondent contends that we lack such jurisdiction because the Ohio decision rested upon the Ohio Constitution, in addition to the

Federal Constitution. Under *Michigan* v. *Long*, 463 U. S. 1032 (1983), when "a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so."* *Id.*, at 1040–1041. Although the opinion below mentions Art. I, § 14, of the Ohio Constitution in passing (a section which reads identically to the Fourth Amendment), the opinion clearly relies on federal law nevertheless. Indeed, the only cases it discusses or even cites are federal cases, except for one state case which itself applies the Federal Constitution.

Our jurisdiction is not defeated by the fact that these citations appear in the body of the opinion, while, under Ohio law, "[the] Supreme Court speaks as a court only through the syllabi of its cases." See *Ohio* v. *Gallagher*, 425 U. S. 257, 259 (1976). When the syllabus, as here, speaks only in general terms of "the federal and Ohio Constitutions," it is permissible for us to turn to the body of the opinion to discern the grounds for decision. *Zacchini* v. *Scripps-Howard Broadcasting Co.*, 433 U. S. 562, 566 (1977).

Respondent Robinette also contends that we may not reach the question presented in the petition because the Supreme Court of Ohio also held, as set out in the syllabus paragraph (1):

> "When the motivation behind a police officer's continued detention of a person stopped for a traffic violation is not related to the purpose of the original, constitutional stop, and when that continued detention is not based on any articulable facts giving rise to a suspicion of some

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*Respondent and his *amici* ask us to take this opportunity to depart from *Michigan* v. *Long*. We are no more persuaded by this argument now than we were two Terms ago, see *Arizona* v. *Evans*, 514 U. S. 1 (1995), and we again reaffirm the *Long* presumption.

> separate illegal activity justifying an extension of the detention, the continued detention constitutes an illegal seizure." 73 Ohio St. 3d, at 650, 653 N. E. 2d, at 696.

In reliance on this ground, the Supreme Court of Ohio held that when Newsome returned to Robinette's car and asked him to get out of the car, after he had determined in his own mind not to give Robinette a ticket, the detention then became unlawful.

Respondent failed to make any such argument in his brief in opposition to certiorari. See this Court's Rule 15.2. We believe the issue as to the continuing legality of the detention is a "predicate to an intelligent resolution" of the question presented, and therefore "fairly included therein." This Court's Rule 14.1(a); *Vance* v. *Terrazas,* 444 U. S. 252, 258–259, n. 5 (1980). The parties have briefed this issue, and we proceed to decide it.

We think that under our recent decision in *Whren* v. *United States,* 517 U. S. 806 (1996) (decided after the Supreme Court of Ohio decided the present case), the subjective intentions of the officer did not make the continued detention of respondent illegal under the Fourth Amendment. As we made clear in *Whren,* " 'the fact that [an] officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.' . . . Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Id.,* at 813 (quoting *Scott* v. *United States,* 436 U. S. 128, 138 (1978)). And there is no question that, in light of the admitted probable cause to stop Robinette for speeding, Deputy Newsome was objectively justified in asking Robinette to get out of the car, subjective thoughts notwithstanding. See *Pennsylvania* v. *Mimms,* 434 U. S. 106, 111, n. 6 (1977) ("We hold . . . that once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures").

We now turn to the merits of the question presented. We have long held that the "touchstone of the Fourth Amendment is reasonableness." *Florida* v. *Jimeno*, 500 U. S. 248, 250 (1991). Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances.

In applying this test we have consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry. Thus, in *Florida* v. *Royer*, 460 U. S. 491 (1983), we expressly disavowed any "litmus-paper test" or single "sentence or . . . paragraph . . . rule," in recognition of the "endless variations in the facts and circumstances" implicating the Fourth Amendment. *Id.*, at 506. Then, in *Michigan* v. *Chesternut*, 486 U. S. 567 (1988), when both parties urged "bright-line rule[s] applicable to all investigatory pursuits," we rejected both proposed rules as contrary to our "traditional contextual approach." *Id.*, at 572–573. And again, in *Florida* v. *Bostick*, 501 U. S. 429 (1991), when the Florida Supreme Court adopted a *per se* rule that questioning aboard a bus always constitutes a seizure, we reversed, reiterating that the proper inquiry necessitates a consideration of "all the circumstances surrounding the encounter." *Id.*, at 439.

We have previously rejected a *per se* rule very similar to that adopted by the Supreme Court of Ohio in determining the validity of a consent to search. In *Schneckloth* v. *Bustamonte*, 412 U. S. 218 (1973), it was argued that such a consent could not be valid unless the defendant knew that he had a right to refuse the request. We rejected this argument: "While knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the *sine qua non* of an effective consent." *Id.*, at 227. And just as it "would be thoroughly impractical to impose on the normal consent search the detailed requirements of an effective warning," *id.*, at 231, so too would it be unrealistic to require police officers to always inform detainees that they are free to go before a consent to search may be deemed voluntary.

The Fourth Amendment test for a valid consent to search is that the consent be voluntary, and "[v]oluntariness is a question of fact to be determined from all the circumstances," *id.*, at 248–249. The Supreme Court of Ohio having held otherwise, its judgment is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE GINSBURG, concurring in the judgment.

Robert Robinette's traffic stop for a speeding violation on an interstate highway in Ohio served as prelude to a search of his automobile for illegal drugs. Robinette's experience was not uncommon in Ohio. As the Ohio Supreme Court related, the sheriff's deputy who detained Robinette for speeding and then asked Robinette for permission to search his vehicle "was on drug interdiction patrol at the time." 73 Ohio St. 3d 650, 651, 653 N. E. 2d 695, 696 (1995). The deputy testified in Robinette's case that he routinely requested permission to search automobiles he stopped for traffic violations. *Ibid.* According to the deputy's testimony in another prosecution, he requested consent to search in 786 traffic stops in 1992, the year of Robinette's arrest. *State* v. *Retherford*, 93 Ohio App. 3d 586, 594, n. 3, 639 N. E. 2d 498, 503, n. 3, dism'd, 69 Ohio St. 3d 1488, 635 N. E. 2d 43 (1994).

From their unique vantage point, Ohio's courts observed that traffic stops in the State were regularly giving way to contraband searches, characterized as consensual, even when officers had no reason to suspect illegal activity. One Ohio appellate court noted: "[H]undreds, and perhaps thousands of Ohio citizens are being routinely delayed in their travels and asked to relinquish to uniformed police officers their right to privacy in their automobiles and luggage, sometimes for no better reason than to provide an officer the opportunity to 'practice' his drug interdiction technique." 93 Ohio App. 3d, at 594, 639 N. E. 2d, at 503 (footnote omitted).

Against this background, the Ohio Supreme Court determined, and announced in Robinette's case, that the federal and state constitutional rights of Ohio citizens to be secure in their persons and property called for the protection of a clear-cut instruction to the State's police officers: An officer wishing to engage in consensual interrogation of a motorist at the conclusion of a traffic stop must first tell the motorist that he or she is free to go. The Ohio Supreme Court described the need for its first-tell-then-ask rule this way:

> "The transition between detention and a consensual exchange can be so seamless that the untrained eye may not notice that it has occurred. . . .
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> . . . . .
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> "Most people believe that they are validly in a police officer's custody as long as the officer continues to interrogate them. The police officer retains the upper hand and the accouterments of authority. That the officer lacks legal license to continue to detain them is unknown to most citizens, and a reasonable person would not feel free to walk away as the officer continues to address him.
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> . . . . .
>
> "While the legality of consensual encounters between police and citizens should be preserved, we do not believe that this legality should be used by police officers to turn a routine traffic stop into a fishing expedition for unrelated criminal activity. The Fourth Amendment to the federal Constitution and Section 14, Article I of the Ohio Constitution exist to protect citizens against such an unreasonable interference with their liberty." 73 Ohio St. 3d, at 654–655, 653 N. E. 2d, at 698–699.

Today's opinion reversing the decision of the Ohio Supreme Court does not pass judgment on the wisdom of the first-tell-then-ask rule. This Court's opinion simply clarifies that the Ohio Supreme Court's instruction to police officers in Ohio is not, under this Court's controlling jurisprudence, the command of the Federal Constitution. See *ante,* at 39–40. The Ohio Supreme Court invoked both the Federal Constitution and the Ohio Constitution without clearly indicating whether state law, standing alone, independently justified the court's rule. The ambiguity in the Ohio Supreme Court's decision renders this Court's exercise of jurisdiction proper under *Michigan* v. *Long,* 463 U. S. 1032, 1040–1042 (1983), and this Court's decision on the merits is consistent with the Court's "totality of the circumstances" Fourth Amendment precedents, see *ante,* at 39. I therefore concur in the Court's judgment.

I write separately, however, because it seems to me improbable that the Ohio Supreme Court understood its first-tell-then-ask rule to be the Federal Constitution's mandate for the Nation as a whole. "[A] State is free *as a matter of its own law* to impose greater restrictions on police activity than those this Court holds to be necessary upon federal constitutional standards." *Oregon* v. *Hass,* 420 U. S. 714, 719 (1975).* But ordinarily, when a state high court grounds a rule of criminal procedure in the Federal Constitution, the

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*Formerly, the Ohio Supreme Court was "reluctant to use the Ohio Constitution to extend greater protection to the rights and civil liberties of Ohio citizens" and had usually not taken advantage of opportunities to "us[e] the Ohio Constitution as an independent source of constitutional rights." *Arnold* v. *Cleveland,* 67 Ohio St. 3d 35, 42, n. 8, 616 N. E. 2d 163, 168, n. 8 (1993). Recently, however, the state high court declared: "The Ohio Constitution is a document of independent force. . . . As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups." *Id.,* at 35, 616 N. E. 2d, at 164 (syllabus).

court thereby signals its view that the Nation's Constitution would require the rule in all 50 States. Given this Court's decisions in consent-to-search cases such as *Schneckloth* v. *Bustamonte,* 412 U. S. 218 (1973), and *Florida* v. *Bostick,* 501 U. S. 429 (1991), however, I suspect that the Ohio Supreme Court may not have homed in on the implication ordinarily to be drawn from a state court's reliance on the Federal Constitution. In other words, I question whether the Ohio court thought of the strict rule it announced as a rule for the governance of police conduct not only in Miami County, Ohio, but also in Miami, Florida.

The first-tell-then-ask rule seems to be a prophylactic measure not so much extracted from the text of any constitutional provision as crafted by the Ohio Supreme Court to reduce the number of violations of textually guaranteed rights. In *Miranda* v. *Arizona,* 384 U. S. 436 (1966), this Court announced a similarly motivated rule as a minimal national requirement without suggesting that the text of the Federal Constitution required the precise measures the Court's opinion set forth. See *id.*, at 467 ("[T]he Constitution [does not] necessarily requir[e] adherence to any particular solution" to the problems associated with custodial interrogations.); see also *Oregon* v. *Elstad,* 470 U. S. 298, 306 (1985) ("The *Miranda* exclusionary rule . . . sweeps more broadly than the Fifth Amendment itself."). Although all parts of the United States fall within this Court's domain, the Ohio Supreme Court is not similarly situated. That court can declare prophylactic rules governing the conduct of officials in Ohio, but it cannot command the police forces of sister States. The very ease with which the Court today disposes of the federal leg of the Ohio Supreme Court's decision strengthens my impression that the Ohio Supreme Court saw its rule as a measure made for Ohio, designed to reinforce in that State the right of the people to be secure against unreasonable searches and seizures.

The Ohio Supreme Court's syllabus and opinion, however, were ambiguous. Under *Long*, the existence of ambiguity regarding the federal- or state-law basis of a state-court decision will trigger this Court's jurisdiction. *Long* governs even when, all things considered, the more plausible reading of the state court's decision may be that the state court did not regard the Federal Constitution alone as a sufficient basis for its ruling. Compare *Arizona* v. *Evans*, 514 U. S. 1, 7–9 (1995), with *id.*, at 31–33 (GINSBURG, J., dissenting).

It is incumbent on a state court, therefore, when it determines that its State's laws call for protection more complete than the Federal Constitution demands, to be clear about its ultimate reliance on state law. Similarly, a state court announcing a new legal rule arguably derived from both federal and state law can definitively render state law an adequate and independent ground for its decision by a simple declaration to that effect. A recent Montana Supreme Court opinion on the scope of an individual's privilege against self-incrimination includes such a declaration:

> "While we have devoted considerable time to a lengthy discussion of the application of the Fifth Amendment to the United States Constitution, it is to be noted that this holding is also based separately and independently on [the defendant's] right to remain silent pursuant to Article II, Section 25 of the Montana Constitution." *State* v. *Fuller*, 276 Mont. 155, 167, 915 P. 2d 809, 816, cert. denied, *post*, p. 930.

An explanation of this order meets the Court's instruction in *Long* that "[i]f the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, [this Court] will not undertake to review the decision." 463 U. S., at 1041.

On remand, the Ohio Supreme Court may choose to clarify that its instructions to law enforcement officers in Ohio find adequate and independent support in state law, and that in issuing these instructions, the court endeavored to state dispositively only the law applicable in Ohio. See *Evans*, 514 U. S., at 30–34 (GINSBURG, J., dissenting). To avoid misunderstanding, the Ohio Supreme Court must itself speak with the clarity it sought to require of its State's police officers. The efficacy of its endeavor to safeguard the liberties of Ohioans without disarming the State's police can then be tested in the precise way Our Federalism was designed to work. See, *e. g.*, Kaye, State Courts at the Dawn of a New Century: Common Law Courts Reading Statutes and Constitutions, 70 N. Y. U. L. Rev. 1, 11–18 (1995); Linde, First Things First: Rediscovering the States' Bills of Rights, 9 U. Balt. L. Rev. 379, 392–396 (1980).

JUSTICE STEVENS, dissenting.

The Court's holding today is narrow: The Federal Constitution does not require that a lawfully seized person be advised that he is "free to go" before his consent to search will be recognized as voluntary. I agree with that holding. Given the Court's reading of the opinion of the Supreme Court of Ohio, I also agree that it is appropriate for the Court to limit its review to answering the sole question presented in the State's certiorari petition.[1] As I read the state-court opinion, however, the prophylactic rule announced in the second syllabus was intended as a guide to the decision of future cases rather than an explanation of the decision in this case. I would therefore affirm the judgment of the Supreme Court of Ohio because it correctly held that respondent's consent to the search of his vehicle was the product of an unlawful detention. Moreover, it is important to emphasize that nothing in the Federal Constitution—or in this Court's opinion—prevents a State from requiring its law enforcement officers to give detained motorists the advice mandated by the Ohio court.

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[1] "Whether the Fourth Amendment to the United States Constitution requires police officers to inform motorists, lawfully stopped for traffic violations, that the legal detention has concluded before any subsequent interrogation or search will be found to be consensual?" Pet. for Cert. i.

I

The relevant facts are undisputed.[2] Officer Newsome stopped respondent because he was speeding. Neither at the time of the stop nor at any later time prior to the search of respondent's vehicle did the officer have any basis for believing that there were drugs in the car. After ordering respondent to get out of his car, issuing a warning, and returning his driver's license, Newsome took no further action related to the speeding violation. He did, however, state: "One question before you get gone: are you carrying any illegal contraband in your car? Any weapons of any kind, drugs, anything like that?" Thereafter, he obtained respondent's consent to search the car.

These facts give rise to two questions of law: whether respondent was still being detained when the "one question" was asked, and, if so, whether that detention was unlawful. In my opinion the Ohio Appellate Court and the Ohio Supreme Court correctly answered both of those questions.

The Ohio Supreme Court correctly relied upon *United States* v. *Mendenhall*, 446 U. S. 544 (1980),[3] which stated that "a person has been 'seized' within the meaning of the Fourth Amendment . . . if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Id.*, at 554 (opinion of Stewart, J.); see *Michigan* v. *Chesternut*, 486 U. S. 567, 573 (1988) (noting that "[t]he Court has since embraced this test"). See also *Florida* v. *Bostick*, 501 U. S. 429, 435–436 (1991) (applying variant of this approach). The Ohio Court of Appeals applied a similar analysis. See App. to Pet. for Cert. 17–18.

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[2] This is in part because crucial portions of the exchange were videotaped; this recording is a part of the record.

[3] See 73 Ohio St. 3d 650, 654, 653 N. E. 2d 695, 698 (1995).

Several circumstances support the Ohio courts' conclusion that a reasonable motorist in respondent's shoes would have believed that he had an obligation to answer the "one question" and that he could not simply walk away from the officer, get back in his car, and drive away. The question itself sought an answer "*before* you get gone." In addition, the facts that respondent had been detained, had received no advice that he was free to leave, and was then standing in front of a television camera in response to an official command are all inconsistent with an assumption that he could reasonably believe that he had no duty to respond. The Ohio Supreme Court was surely correct in stating: "Most people believe that they are validly in a police officer's custody as long as the officer continues to interrogate them. The police officer retains the upper hand and the accouterments of authority. That the officer lacks legal license to continue to detain them is unknown to most citizens, and a reasonable person would not feel free to walk away as the officer continues to address him." 73 Ohio St. 3d, at 655, 653 N. E. 2d, at 698.[4]

Moreover, as an objective matter it is fair to presume that most drivers who have been stopped for speeding are in a hurry to get to their destinations; such drivers have no interest in prolonging the delay occasioned by the stop just to engage in idle conversation with an officer, much less to allow a potentially lengthy search.[5] I also assume that motorists—even those who are not carrying contraband—have an interest in preserving the privacy of their vehicles and possessions from the prying eyes of a curious stranger. The fact that this particular officer successfully used a similar method of obtaining consent to search roughly 786 times in one year, *State* v. *Retherford,* 93 Ohio App. 3d 586, 591–592, 639 N. E. 2d 498, 502, dism'd, 69 Ohio St. 3d 1488, 635 N. E. 2d 43 (1994), indicates that motorists generally respond in a manner that is contrary to their self-interest. Repeated decisions by ordinary citizens to surrender that interest cannot satisfactorily be explained on any hypothesis other than an assumption that they believed they had a legal duty to do so.

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[4] A learned commentator has expressed agreement on this point. See 4 W. LaFave, Search and Seizure § 9.3(a), p. 112 (3d ed. 1996 and Supp. 1997) ("Given the fact that [defendant] quite clearly had been seized when his car was pulled over, the return of the credentials hardly manifests a change in status when it was immediately followed by interrogation concerning other criminal activity"); see also *ibid.* (approving of Ohio Supreme Court's analysis in this case). We have indicated as much ourselves in the past. See *Berkemer* v. *McCarty*, 468 U. S. 420, 436 (1984) ("Certainly few motorists would feel free either to disobey a directive to pull over or to leave the scene of a traffic stop without being told they might do so").

The Ohio Supreme Court was therefore entirely correct to presume in the first syllabus preceding its opinion that a "continued detention" was at issue here. 73 Ohio St. 3d, at 650, 653 N. E. 2d, at 696.[6] The Ohio Court of Appeals reached a similar conclusion. In response to the State's contention that Robinette "was free to go" at the time consent was sought, that court held—after reviewing the record—that "a reasonable person in Robinette's position would not believe that the investigative stop had been concluded, and that he or she was free to go, so long as the police officer was continuing to ask investigative questions." App. to Pet. for Cert. 17–18. As I read the Ohio opinions, these determinations were independent of the bright-line rule criticized by the majority.[7] I see no reason to disturb them.

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[5] Though this search does not appear to have been particularly intrusive, that may not always be so. See Brief for American Civil Liberties Union et al. as *Amici Curiae* 28–29. Indeed, our holding in *Florida* v. *Jimeno,* 500 U. S. 248 (1991), allowing police to open closed containers in the context of an automobile consent search where the "consent would reasonably be understood to extend to a particular container," *id.*, at 252, ensures that many motorists will wind up "consenting" to a far broader search than they might have imagined. See *id.*, at 254–255 ("only objection that the police could have to" a rule requiring police to seek consent to search containers as well as the automobile itself "is that it would prevent them from exploiting the ignorance of a citizen who simply did not anticipate that his consent to search the car would be understood to authorize the police to rummage through his packages") (Marshall, J., dissenting).

[6] It is ordinarily the syllabus that precedes an Ohio Supreme Court opinion, rather than the opinion itself, that states the law of the case. *Cassidy* v. *Glossip,* 12 Ohio St. 2d 17, 24, 231 N. E. 2d 64, 68 (1967); see *Migra* v. *Warren City School Dist. Bd. of Ed.*, 465 U. S. 75, 86, n. 8 (1984); *Ohio* v. *Gallagher,* 425 U. S. 257, 259 (1976).

In the first syllabus, the Ohio Supreme Court also answered the question whether the officer's continued detention of respondent was lawful or unlawful. See *ante*, at 37–38. Although there is a possible ambiguity in the use of the word "motivation" in the Ohio Supreme Court's explanation of why the traffic officer's continued detention of respondent was an illegal seizure, the first syllabus otherwise was a correct statement of the relevant federal rule as well as the relevant Ohio rule. As this Court points out in its opinion, as a matter of federal law the subjective motivation of the officer does not determine the legality of a detention. Because I assume that the learned judges sitting on the Ohio Supreme Court were well aware of this proposition, we should construe the syllabus generously by replacing the ambiguous term "motivation behind" with the term "justification for" in order to make the syllabus unambiguously state the correct rule of federal law. So amended, the controlling proposition of federal law reads:

> "When the [justification for] a police officer's continued detention of a person stopped for a traffic violation is

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[7] Indeed, the first paragraph of the Ohio Supreme Court's opinion clearly indicates that the bright-line rule was meant to apply only in *future* cases. The Ohio Supreme Court first explained: "We find that the search was invalid since it was the product of an unlawful seizure." 73 Ohio St. 3d, at 652, 653 N. E. 2d, at 697. Only then did the court proceed to point out that it would "also use this case to establish a bright-line test . . . ." *Ibid.*

> not related to the purpose of the original, constitutional stop, and when that continued detention is not based on any articulable facts giving rise to a suspicion of some separate illegal activity justifying an extension of the detention, the continued detention constitutes an illegal seizure." 73 Ohio St. 3d, at 650, 653 N. E. 2d, at 696.

Notwithstanding that the subjective motivation for the officer's decision to stop respondent related to drug interdiction, the legality of the stop depended entirely on the fact that respondent was speeding. Of course, "[a]s a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren* v. *United States,* 517 U. S. 806, 810 (1996). As noted above, however, by the time Robinette was asked for consent to search his automobile, the lawful traffic stop had come to an end; Robinette had been given his warning, and the speeding violation provided no further justification for detention. The continued detention was therefore only justifiable, if at all, on some other grounds.[8]

At no time prior to the search of respondent's vehicle did any articulable facts give rise to a reasonable suspicion of some separate illegal activity that would justify further detention. See *United States* v. *Sharpe,* 470 U. S. 675, 682 (1985); *United States* v. *Brignoni-Ponce,* 422 U. S. 873, 881–882 (1975); *Terry* v. *Ohio,* 392 U. S. 1, 21 (1968). As an objective matter, it inexorably follows that when the officer had completed his task of either arresting or reprimanding the driver of the speeding car, his continued detention of that person constituted an illegal seizure. This holding by the Ohio Supreme Court is entirely consistent with federal law.[9]

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[8] Cf. *Florida* v. *Royer,* 460 U. S. 491, 500 (1983) (plurality opinion) ("[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop"); *United States* v. *Brignoni-Ponce,* 422 U. S. 873, 881 (1975) ("stop and inquiry must be 'reasonably related in scope to the justification for their initiation'" (quoting *Terry* v. *Ohio,* 392 U. S. 1, 29 (1968)).

The proper disposition follows as an application of well-settled law. We held in *Florida* v. *Royer,* 460 U. S. 491 (1983), that a consent obtained during an illegal detention is ordinarily ineffective to justify an otherwise invalid search.[10] See also *Florida* v. *Bostick,* 501 U. S., at 433–434 (noting that if consent was given during the course of an unlawful seizure, the results of the search "must be suppressed as tainted fruit"); *Dunaway* v. *New York,* 442 U. S. 200, 218–219 (1979); *Brown* v. *Illinois,* 422 U. S. 590, 601–602 (1975). Cf. *Wong Sun* v. *United States,* 371 U. S. 471 (1963). Because Robinette's consent to the search was the product of an unlawful detention, "the consent was tainted by the illegality and was ineffective to justify the search." *Royer,* 460 U. S., at 507–508 (plurality opinion). I would therefore affirm the judgment below.

II

A point correctly raised by JUSTICE GINSBURG merits emphasis. The Court's opinion today does not address either the wisdom of the rule announced in the second syllabus preceding the Ohio Supreme Court's opinion or the validity of that rule as a matter of Ohio law. Nevertheless the risk that the narrowness of the Court's holding may not be fully understood prompts these additional words.

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[9] Since "this Court reviews judgments, not opinions," *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837, 842 (1984), the Ohio Supreme Court's holding that Robinette's continued seizure was illegal on these grounds provides a sufficient basis for affirming its judgment.

[10] Writing for a plurality of the Court, Justice White explained that "statements given during a period of illegal detention are inadmissible even though voluntarily given if they are the product of the illegal detention and not the result of an independent act of free will." 460 U. S., at 501. The defendant in *Royer* had been "illegally detained when he consented to the search." *Id.,* at 507. As a result, the plurality agreed that "the consent was tainted by the illegality and was ineffective to justify the search." *Id.,* at 507–508. Concurring in the result, Justice Brennan agreed with this much of the plurality's decision, diverging on other grounds. See *id.,* at 509. Justice Brennan's agreement on that narrow principle represents the holding of the Court. See *Marks* v. *United States,* 430 U. S. 188, 193 (1977).

There is no rule of federal law that precludes Ohio from requiring its police officers to give its citizens warnings that will help them to understand whether a valid traffic stop has come to an end, and will help judges to decide whether a reasonable person would have felt free to leave under the circumstances at issue in any given case.[11] Nor, as I have previously observed, is there anything "in the Federal Constitution that prohibits a State from giving lawmaking power to its courts." *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U. S. 456, 479, and n. 3 (1981) (dissenting opinion). Thus, as far as we are concerned, whether Ohio acts through one branch of its government or another, it has the same power to enforce a warning rule as other States that may adopt such rules by executive action.[12]

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[11] Indeed, we indicated in *Florida* v. *Bostick*, 501 U. S. 429, 437 (1991), that the fact a defendant had been explicitly advised that he could refuse to give consent was relevant to the question whether he was seized at the time consent was sought. And, in other cases, we have stressed the importance of similar advice as a circumstance supporting the conclusion that a consent to search was voluntary. See *Schneckloth* v. *Bustamonte*, 412 U. S. 218, 227 (1973); *United States* v. *Mendenhall*, 446 U. S. 544, 558–559 (1980). Cf. *Washington* v. *Chrisman*, 455 U. S. 1, 9 (1982) (consent to search was voluntary where defendant "consented, in writing, . . . after being advised that his consent must be voluntary and that he had an absolute right to refuse consent").

[12] As we are informed by a brief *amicus curiae* filed by Americans For Effective Law Enforcement, Inc.: "Such a warning may be good police practice, and indeed *amicus* knows that many law enforcement agencies among our constituents have routinely incorporated a warning into their Fourth Amendment consent forms that they use in the field, but it is precisely that—a *practice* and *not a constitutional imperative.* An officer who includes such a warning in his request for consent undoubtedly presents a stronger case for a finding of voluntariness in a suppression hearing, and we would not suggest that such agencies and officers do other-

Moreover, while I recognize that warning rules provide benefits to the law enforcement profession and the courts, as well as to the public, I agree that it is not our function to pass judgment on the wisdom of such rules. Accordingly, while I have concluded that the judgment of the Supreme Court of Ohio should be affirmed, and thus dissent from this Court's disposition of the case, I am in full accord with its conclusion that the Federal Constitution neither mandates nor prohibits the warnings prescribed by the Ohio Court. Whether such a practice should be followed in Ohio is a matter for Ohio lawmakers to decide.

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wise. We know, too, that instructors in many police training programs of leading universities and management institutes routinely recommend such warnings as a sound practice, likely to bolster the voluntariness of a consent to search. [We ourselves] conduc[t] law enforcement training programs at the national level and many of our own speakers have made this very point." Brief for Americans For Effective Law Enforcement, Inc., as *Amicus Curiae* 7.

UNITED STATES ET AL. *v.* JOSE, TRUSTEE OF JOSE BUSINESS TRUST ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 95–2082. Decided December 2, 1996

In a proceeding to enforce two Internal Revenue Service (IRS) summonses issued to respondent, petitioners, the United States and an IRS agent, represented that the documents sought were for a civil investigation. The Magistrate found the summonses valid and enforceable for the purpose stated. As the Magistrate recommended, the District Court ordered enforcement of the summonses, but required the IRS to give respondent five days' notice before transferring summoned information from its Examination Division to any other IRS office. Challenging the District Court's authority to impose such a restriction, the IRS appealed. The Ninth Circuit dismissed the appeal as not ripe because the record did not indicate that the Examination Division had attempted to disclose the documents to any other IRS division; therefore the five-day notice requirement had not been triggered.

Held: The District Court issued a final, appealable order. Its decision dispositively granted in part and denied in part the remedy requested. The IRS prevailed to the extent that the District Court enforced the summonses, but did not prevail to the extent that the District Court imposed the five-day notice condition. With that disposition, the District Court completed its adjudication. This Court has expressly held that IRS summons enforcement orders are subject to appellate review. *Church of Scientology of Cal.* v. *United States*, 506 U. S. 9, 15. Finality, not ripeness, is the doctrine governing appeals from district court to circuit court. The Ninth Circuit cited, and this Court has found, no authority supporting the Ninth Circuit's cryptic declaration that the conditional enforcement order was not ripe for appeal. The Court expresses no opinion on the merits of the underlying dispute, but notes that the matter implicates an intercircuit conflict.

Certiorari granted; 71 F. 3d 1484, reversed and remanded.

PER CURIAM.

Petitioners, the United States of America and Leslie M. Nishimura, Revenue Agent of the Internal Revenue Service (IRS or Service), commenced a proceeding to enforce two

IRS summonses issued to Laddie F. Jose, as trustee for the Jose Business Trust and Jose Family Trust. The Service represented to the Magistrate that the documents sought "are for the purpose of a civil investigation." App. to Pet. for Cert. 16a. The Magistrate found the summonses valid and enforceable for the purpose stated. He did not address the question whether the summons enforcement requirements "would be satisfied in the event petitioners decide to pursue a criminal tax investigation." *Ibid.* That question was not before him in view of the sole purpose—civil investigation—specified by the IRS. *Ibid.*

The Magistrate recommended that the District Court (1) enforce petitioners' summonses, and (2) require the IRS to give respondent five days' notice prior to any circulation or transfer of the summoned documents to any division of the IRS other than the Examination Division. *Id.,* at 20a–21a.

Before the District Court, neither party objected to the finding that the alleged civil investigation was a legitimate purpose and that the summonses are valid and should be enforced. *Id.,* at 16a. The single issue in controversy was "whether [the court] may restrict enforcement of petitioners' summonses by requiring the IRS to notify respondent five days in advance before circulating, transferring, or copying the summon[ed] documents to any other division of the IRS, including its [C]riminal Investigation Division." *Id.,* at 15a. The District Court determined that the restriction was lawful and proper and entered a final order to that effect. *Id.,* at 19a.

The Service appealed, asserting that the District Court lacked authority to impose the restriction. The Ninth Circuit correctly recognized that it had jurisdiction "pursuant to 28 U. S. C. § 1291," which authorizes appeals from "final decisions." It nonetheless dismissed the appeal "as not ripe." 71 F. 3d 1484, 1485 (1995). The majority stated:

> "The record indicates that the IRS represented to the district court that the documents requested of Jose were

> for civil tax examination purposes only, not for a criminal investigation. The record does not indicate that the Examination Division has attempted to disclose the documents to any other IRS division, thereby triggering the five-day notice requirement. Thus, any detrimental impact the district court's order may have on the IRS's investigation is, at this time, purely speculative. Accordingly, the IRS's appeal is not ripe for review." *Ibid.*

The dissenting judge concluded that the case was "ready and ripe" for decision, *id.*, at 1486, and stated at some length her reasons for believing that the restriction approved by the District Court was unwarranted. The United States and Revenue Agent Nishimura petitioned for certiorari. We called for a response from trustee Jose, but he filed no brief in opposition. We now reverse.

We express no opinion on the merits of the underlying dispute. The matter, indeed, is one that implicates an intercircuit conflict.* We think it clear, however, that the District Court's final order is indeed final. It is a decision dispositively granting in part and denying in part the remedy requested. The IRS prevailed to the extent that the District Court enforced the summonses. The Service did not

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*Compare *United States* v. *Barrett*, 837 F. 2d 1341, 1349–1351 (CA5 1988) (en banc) *(per curiam)* (District Court lacks authority to place conditions on enforcement of IRS summons), cert. denied, 492 U. S. 926 (1989), with *United States* v. *Zolin*, 809 F. 2d 1411, 1417 (CA9 1987) (upholding conditions on enforcement of IRS summons), aff'd by an equally divided Court, 491 U. S. 554, 561 (1989), and *United States* v. *Author Servs., Inc.*, 804 F. 2d 1520, 1525–1526 (CA9 1986) (District Court has "considerable" discretion to set terms of enforcement order); see also *Church of Scientology of Cal.* v. *United States*, 506 U. S. 9, 14–15, n. 7 (1992) (recognizing split). The existing intercircuit conflict concerns judicial limitations on disclosure by the agency seeking summons enforcement to other governmental agencies. The instant case involves the related but distinct question of the District Court's authority to restrict sharing of information within an agency.

prevail to the extent that the District Court imposed a condition—an unqualified requirement that the IRS provide five days' notice to the trustee before transferring summoned information from its Examination Division to any other IRS office. With that disposition, the District Court completed its adjudication. "[W]e have expressly held that IRS summons enforcement orders *are* subject to appellate review." *Church of Scientology of Cal.* v. *United States,* 506 U. S. 9, 15 (1992) (citing *Reisman* v. *Caplin,* 375 U. S. 440, 449 (1964)). We adhere to that view, and note that appellate jurisdiction over final decisions does not turn on which side prevailed in the District Court.

Finality, not ripeness, is the doctrine governing appeals from district court to court of appeals. In this case, to gain access to appeal from the District Court's final decision to the extent that it disfavored the Service, the IRS is not obligated, first, to defy the District Court's order. Nor is the IRS required to provide notice of its intention to transfer documents internally, for this is the very condition the IRS seeks to attack on appeal.

The Court of Appeals cited no authority supporting its cryptic declaration that the conditional enforcement order was not ripe for appeal. We have found none. Indeed, prior to this case, the Ninth Circuit itself had twice upheld similar conditional enforcement orders. See *United States* v. *Zolin,* 809 F. 2d 1411, 1417 (CA9 1987); *United States* v. *Author Servs., Inc.,* 804 F. 2d 1520, 1525–1526 (CA9 1986). In neither case did the Court of Appeals avoid the merits by interjecting the doctrine of ripeness. Aggrieved by the conditional enforcement upheld in *Zolin,* the United States petitioned this Court for a writ of certiorari. We granted the writ, 488 U. S. 907 (1988), and affirmed the Ninth Circuit's ruling by an equally divided Court, 491 U. S. 554, 561 (1989). We hardly would have done so had we considered the matter unfit for review.

For the reasons stated, we grant the petition for a writ of certiorari, reverse the Ninth Circuit's judgment dismissing the appeal, and remand the case for further proceedings consistent with this opinion.

It is so ordered.

IN RE GAYDOS

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 96–5831. Decided December 2, 1996

Petitioner seeks leave to proceed *in forma pauperis* and requests this Court to issue a writ of mandamus. She has been denied leave to proceed *in forma pauperis* 10 times and has filed at least 8 other petitions.

Held: Petitioner's requests are denied. For the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 *(per curiam)*, the Clerk is directed not to accept any further petitions for certiorari or for extraordinary writs in noncriminal matters from petitioner unless she pays the required docketing fee and submits her petition in compliance with this Court's Rule 33.1.

Motion denied.

PER CURIAM.

Pro se petitioner Maria L. Gaydos seeks leave to proceed *in forma pauperis* and requests this Court to issue a writ of mandamus ordering (1) the Clerk of the District Court for the District of New Jersey to file her Freedom of Information Act (FOIA) lawsuit challenging this Court's orders in 10 previous cases in which Gaydos was denied leave to proceed *in forma pauperis* under this Court's Rule 39.8;* (2) the disqualification of William T. Walsh, Clerk of the District Court, and William K. Suter, Clerk of this Court; and (3) the issuance of summons under Federal Rule of Civil Procedure 4. In the alternative, she asks this Court to exercise its original jurisdiction over her FOIA suit because her complaint concerns this Court's orders.

We deny petitioner's requests. Petitioner is allowed until December 23, 1996, within which to pay the docketing fees required by Rule 38 and to submit her petition in compliance

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*Rule 39.8 provides: "If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ . . . is frivolous or malicious, the Court may deny a motion for leave to proceed *in forma pauperis.*"

with Rule 33.1. For the reasons discussed below, we direct the Clerk of the Court not to accept any further petitions for certiorari or for extraordinary writs in noncriminal matters from petitioner unless she first pays the docketing fee required by Rule 38 and submits her petition in compliance with Rule 33.1.

Petitioner has a history of frivolous, repetitive filings. She has been denied leave to proceed *in forma pauperis* 10 times, and she has filed at least 8 other petitions. This most recent petition is nearly incomprehensible, and alludes to, among other things, fraud by the staff of this Court and impending impeachment proceedings against Clerks Walsh and Suter in the House of Representatives. We also note that the relief she purports to seek has already been granted: The District Court docketed petitioner's FOIA complaint as Case No. 96–CV–42435 on September 9, 1996, and promptly dismissed it "in its entirety" the following week.

We enter the order barring future *in forma pauperis* filings for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992). Because petitioner has limited her abuse of our processes to noncriminal cases, we limit our sanction accordingly.

It is so ordered.

JUSTICE STEVENS, dissenting.

For reasons previously stated, see *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1, 4 (1992), and cases cited, I respectfully dissent.

CATERPILLAR INC. *v.* LEWIS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 95–1263. Argued November 12, 1996—Decided December 10, 1996

Respondent Lewis, a Kentucky resident, commenced this civil action in Kentucky state court after sustaining personal injuries while operating a bulldozer. Asserting state-law claims, Lewis named as defendants both the manufacturer of the bulldozer—petitioner Caterpillar Inc., a Delaware corporation with its principal place of business in Illinois—and the company that serviced the bulldozer—Whayne Supply Company, a Kentucky corporation with its principal place of business in Kentucky. Liberty Mutual Insurance Group, a Massachusetts corporation with its principal place of business in that State, intervened as a plaintiff, asserting subrogation claims against both Caterpillar and Whayne Supply for workers' compensation benefits Liberty Mutual had paid to Lewis on behalf of his employer. Shortly after learning of a settlement agreement between Lewis and Whayne Supply, Caterpillar filed a notice of removal in Federal District Court, grounding federal jurisdiction on diversity of citizenship, see 28 U. S. C. § 1332. The notice explained that the case was nonremovable at the lawsuit's start: Complete diversity was absent then because plaintiff Lewis and defendant Whayne Supply shared Kentucky citizenship. Caterpillar assumed that the settlement agreement between these two parties would result in Whayne Supply's dismissal from the lawsuit, yielding complete diversity and rendering the case removable. Lewis promptly moved to remand the case to state court, asserting that diversity was defeated by Whayne Supply's continuing presence as a defendant due to Liberty Mutual's subrogation claim against it. The District Court denied the motion, erroneously concluding that diversity had become complete. Before trial, however, Liberty Mutual's subrogation claim against Whayne Supply was settled, and that defendant was dismissed as a party. Complete diversity thereafter existed. The case proceeded to trial, jury verdict, and judgment for Caterpillar. The Sixth Circuit vacated the judgment, concluding that, absent complete diversity at the time of removal, the District Court lacked subject-matter jurisdiction.

Held: A district court's error in failing to remand a case improperly removed is not fatal to the ensuing adjudication if federal jurisdictional requirements are met at the time judgment is entered. Pp. 67–78.

(a) The general-diversity statute, § 1332(a), authorizes federal court jurisdiction over cases in which the citizenship of each plaintiff is diverse from the citizenship of each defendant. See *Carden* v. *Arkoma Associates*, 494 U. S. 185, 187. When a plaintiff files a state-court civil action over which the federal district courts would have original jurisdiction based on diversity of citizenship, the defendant or defendants may remove the action to federal court, § 1441(a), provided that no defendant "is a citizen of the State in which such action is brought," § 1441(b). In a case not originally removable from state court, a defendant who receives a pleading or other paper indicating the post-commencement satisfaction of federal jurisdictional requirements—*e. g.*, by reason of a nondiverse party's dismissal—may remove the case to federal court within 30 days. § 1446(b). No case, however, may be removed based on diversity "more than 1 year after commencement of the action." *Ibid.* Once a defendant has filed a notice of removal in the federal court, a plaintiff objecting to removal "on the basis of any defect in removal procedure" may, within 30 days, file a motion to remand the case to state court. § 1447(c). This 30-day limit does not apply, however, to jurisdictional defects: "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." *Ibid.* Pp. 67–69.

(b) *American Fire & Casualty Co.* v. *Finn*, 341 U. S. 6, and *Grubbs* v. *General Elec. Credit Corp.*, 405 U. S. 699, are key cases in point and tend in Caterpillar's favor. Each suggests that the existence of subject-matter jurisdiction at time of judgment may shield a judgment against later jurisdictional attack despite an improper removal. *Finn*, 341 U. S., at 16; *Grubbs*, 405 U. S., at 700. However, neither decision resolves dispositively a controversy of the kind here at issue, for neither involved a plaintiff who moved promptly, but unsuccessfully, to remand a case improperly removed from state court to federal court, and then challenged on appeal a judgment entered by the federal court. Pp. 70–73.

(c) Beyond question, as Lewis acknowledges, diversity became complete in this case when Whayne Supply was formally dismissed as a party. Nevertheless, Caterpillar moves too quickly in claiming that elimination of the *jurisdictional* defect before trial also cured a *statutory* flaw—Caterpillar's failure to meet the § 1441(a) requirement that the case be fit for federal adjudication at the time the removal petition was filed. By timely moving for remand, Lewis did all that was necessary to preserve his objection to removal. An order denying a motion to remand, "standing alone," is "obviously . . . not final and [immediately] appealable" as of right, *Chicago, R. I. & P. R. Co.* v. *Stude*, 346 U. S. 574, 578, and a plaintiff is not required to take an interlocutory appeal pursuant to 28 U. S. C. § 1292(b) in order to avoid waiving whatever ultimate appeal right he may have. Having preserved his objection, Lewis urges that ultimate satisfaction of the subject-matter jurisdiction requirement ought not swallow up antecedent statutory violations. Lewis' arguments in support of this position are hardly meritless, but they run up against an overriding consideration. Once a diversity case has been tried in federal court, with rules of decision supplied by state law under the regime of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, considerations of finality, efficiency, and economy become overwhelming. Cf., *e. g.*, *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U. S. 826, 836. This view is in harmony with a main theme of the removal scheme devised by Congress, which calls for expeditious superintendence by district courts. In this case, no jurisdictional defect lingered through judgment in the District Court. To wipe out the adjudication postjudgment, and return to state court a case now satisfying all federal jurisdictional requirements, would impose an exorbitant cost on our dual court system, a cost incompatible with the fair and unprotracted administration of justice. Pp. 73–77.

(d) Lewis' prediction that rejection of his petition will provide state-court defendants with an enormous incentive to attempt unlawful removals rests on an assumption this Court does not indulge—that federal district courts generally will not comprehend, or will balk at applying, the removal rules Congress has prescribed. The prediction furthermore assumes defendants' readiness to gamble that any jurisdictional defect, for example, the absence of complete diversity, will first escape detection, then disappear prior to judgment. This Court is satisfied that the well-advised defendant will foresee the likely outcome of an unwarranted removal—a swift and nonreviewable remand order, see §§ 1447(c), (d), attended by the displeasure of a district court whose authority has been improperly invoked. Pp. 77–78.

Reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.

Kenneth S. Geller argued the cause for petitioner. With him on the briefs were *Michael R. Feagley, John E. Muench, Charles Rothfeld, Leslie W. Morris II, James B. Buda,* and *William F. Maready.*

Leonard J. Stayton argued the cause for respondent. With him on the brief were *Paul Alan Levy* and *Alan B. Morrison.**

JUSTICE GINSBURG delivered the opinion of the Court.

This case, commenced in a state court, involves personal injury claims arising under state law. The case was removed to a federal court at a time when, the Court of Appeals concluded, complete diversity of citizenship did not exist among the parties. Promptly after the removal, the plaintiff moved to remand the case to the state court, but the District Court denied that motion. Before trial of the case, however, all claims involving the nondiverse defendant were settled, and that defendant was dismissed as a party to the action. Complete diversity thereafter existed. The case proceeded to trial, jury verdict, and judgment for the removing defendant. The Court of Appeals vacated the judgment, concluding that, absent complete diversity at the time of removal, the District Court lacked subject-matter jurisdiction.

The question presented is whether the absence of complete diversity at the time of removal is fatal to federal-court adjudication. We hold that a district court's error in failing to remand a case improperly removed is not fatal to the ensuing adjudication if federal jurisdictional requirements are met at the time judgment is entered.

I

Respondent James David Lewis, a resident of Kentucky, filed this lawsuit in Kentucky state court on June 22, 1989, after sustaining injuries while operating a bulldozer. Asserting state-law claims based on defective manufacture, negligent maintenance, failure to warn, and breach of warranty, Lewis named as defendants both the manufacturer of the bulldozer—petitioner Caterpillar Inc., a Delaware corporation with its principal place of business in Illinois—and the company that serviced the bulldozer—Whayne Supply Company, a Kentucky corporation with its principal place of business in Kentucky.

**Patrick W. Lee* filed a brief for the Product Liability Advisory Council, Inc., as *amicus curiae* urging reversal.

Several months later, Liberty Mutual Insurance Group, the insurance carrier for Lewis' employer, intervened in the lawsuit as a plaintiff. A Massachusetts corporation with its principal place of business in that State, Liberty Mutual asserted subrogation claims against both Caterpillar and Whayne Supply for workers' compensation benefits Liberty Mutual had paid to Lewis on behalf of his employer.

Lewis entered into a settlement agreement with defendant Whayne Supply less than a year after filing his complaint. Shortly after learning of this agreement, Caterpillar filed a notice of removal, on June 21, 1990, in the United States District Court for the Eastern District of Kentucky. Grounding federal jurisdiction on diversity of citizenship, see 28 U. S. C. § 1332, Caterpillar satisfied with only a day to spare the statutory requirement that a diversity-based removal take place within one year of a lawsuit's commencement, see 28 U. S. C. § 1446(b). Caterpillar's notice of removal explained that the case was nonremovable at the lawsuit's start: Complete diversity was absent then because plaintiff Lewis and defendant Whayne Supply shared Kentucky citizenship. App. 31. Proceeding on the understanding that the settlement agreement between these two Kentucky parties would result in the dismissal of Whayne Supply from the lawsuit, Caterpillar stated that the settlement rendered the case removable. *Id.*, at 31–32.

Lewis objected to the removal and moved to remand the case to state court. Lewis acknowledged that he had settled his own claims against Whayne Supply. But Liberty Mutual had not yet settled its subrogation claim against Whayne Supply, Lewis asserted. Whayne Supply's presence as a defendant in the lawsuit, Lewis urged, defeated diversity of citizenship. *Id.*, at 36. Without addressing this argument, the District Court denied Lewis' motion to remand on September 24, 1990, treating as dispositive Lewis' admission that he had settled his own claims against Whayne Supply. *Id.*, at 55.

Discovery, begun in state court, continued in the now federal lawsuit, and the parties filed pretrial conference papers beginning in July 1991. In June 1993, plaintiff Liberty Mutual and defendant Whayne Supply entered into a settlement of Liberty Mutual's subrogation claim, and the District Court dismissed Whayne Supply from the lawsuit. With Caterpillar as the sole defendant adverse to Lewis,[1] the case proceeded to a six-day jury trial in November 1993, ending in a unanimous verdict for Caterpillar. The District Court entered judgment for Caterpillar on November 23, 1993, and denied Lewis' motion for a new trial on February 1, 1994.

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[1] In accord with 28 U. S. C. § 1367 and Rule 14 of the Federal Rules of Civil Procedure, Caterpillar, after removing the case to federal court, impleaded Lewis' employer, Gene Wilson Enterprises, a Kentucky corporation, as a third-party defendant. See App. 2. Gene Wilson Enterprises, so far as the record shows, remained a named third-party defendant, adverse solely to third-party plaintiff Caterpillar, through judgment. See Brief for Respondent 5. No dispute ran between Lewis and his employer, and Caterpillar's third-party complaint against Gene Wilson Enterprises had no bearing on the authority of the federal court to adjudicate the diversity claims Lewis asserted against Caterpillar. See, *e. g.*, *Wichita Railroad & Light Co.* v. *Public Util. Comm'n of Kan.*, 260 U. S. 48, 54 (1922) (federal jurisdiction once acquired on the ground of complete diversity of citizenship is unaffected by the subsequent intervention "of a party whose presence is not essential to a decision of the controversy between the original parties"). As elaborated in 3 J. Moore, Moore's Federal Practice ¶ 14.26, p. 14–116 (2d ed. 1996) (footnotes omitted): "Once federal subject matter jurisdiction is established over the underlying case between [plaintiff] and [defendant], the jurisdictional propriety of each additional claim is to be assessed individually. Thus, assuming that jurisdiction is based upon diversity of citizenship between [plaintiff] and [defendant], the question concerning impleader is whether there is a jurisdictional basis for the claim by [defendant] against [third-party defendant]. The fact that [plaintiff] and [third-party defendant] may be co-citizens is completely irrelevant. Unless [plaintiff] chooses to amend his complaint to assert a claim against [third-party defendant], [plaintiff] and [third-party defend-

On appeal, the Court of Appeals for the Sixth Circuit accepted Lewis' argument that, at the time of removal, Whayne Supply remained a defendant in the case due to Liberty Mutual's subrogation claim against it. App. to Pet. for Cert. 8a. Because the party lineup, on removal, included Kentucky plaintiff Lewis and Kentucky defendant Whayne Supply, the Court of Appeals observed that diversity was not complete when Caterpillar took the case from state court to federal court. *Id.*, at 8a–9a. Consequently, the Court of Appeals concluded, the District Court "erred in denying [Lewis'] motion to remand this case to the state court for lack of subject matter jurisdiction." *Id.*, at 9a. That error, according to the Court of Appeals, made it necessary to vacate the District Court's judgment. *Ibid.*[2]

Caterpillar petitioned for this Court's review. Caterpillar stressed that the nondiverse defendant, Whayne Supply, had been dismissed from the lawsuit prior to trial. It was therefore improper, Caterpillar urged, for the Court of Appeals to vacate the District Court's judgment—entered after several years of litigation and a six-day trial—on account of a jurisdictional defect cured, all agreed, by the time of trial and judgment. Pet. for Cert. 8. We granted certiorari, 517 U. S. 1133 (1996), and now reverse.

II

The Constitution provides, in Article III, §2, that "[t]he judicial Power [of the United States] shall extend . . . to Con-

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ant] are simply not adverse, and there need be no basis of jurisdiction between them."

[2] Because the Court of Appeals held the District Court lacked jurisdiction over the case, it did not reach several other issues Lewis raised on appeal. See App. to Pet. for Cert. 2a, 9a, n. 3.

troversies . . . between Citizens of different States." Commencing with the Judiciary Act of 1789, ch. 20, § 11, 1 Stat. 78, Congress has constantly authorized the federal courts to exercise jurisdiction based on the diverse citizenship of parties. In *Strawbridge* v. *Curtiss*, 3 Cranch 267 (1806), this Court construed the original Judiciary Act's diversity provision to require complete diversity of citizenship. *Id.*, at 267. We have adhered to that statutory interpretation ever since. See *Carden* v. *Arkoma Associates*, 494 U. S. 185, 187 (1990). The current general-diversity statute, permitting federal district court jurisdiction over suits for more than $50,000 "between . . . citizens of different States," 28 U. S. C. § 1332(a), thus applies only to cases in which the citizenship of each plaintiff is diverse from the citizenship of each defendant.[3]

When a plaintiff files in state court a civil action over which the federal district courts would have original jurisdiction based on diversity of citizenship, the defendant or defendants may remove the action to federal court, 28 U. S. C. § 1441(a), provided that no defendant "is a citizen of the State in which such action is brought," § 1441(b).[4] In a

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[3] This "complete diversity" interpretation of the general-diversity provision is a matter of statutory construction. "Article III poses no obstacle to the legislative extension of federal jurisdiction, founded on diversity, so long as any two adverse parties are not co-citizens." *State Farm Fire & Casualty Co.* v. *Tashire*, 386 U. S. 523, 531 (1967).

[4] In relevant part, 28 U. S. C. § 1441 provides:

"(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

"(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and case not originally removable, a defendant who receives a pleading or other paper indicating the postcommencement satisfaction of federal jurisdictional requirements—for example, by reason of the dismissal of a nondiverse party—may remove the case to federal court within 30 days of receiving such information. § 1446(b). No case, however, may be removed from state to federal court based on diversity of citizenship "more than 1 year after commencement of the action." *Ibid.*[5]

Once a defendant has filed a notice of removal in the federal district court, a plaintiff objecting to removal "on the basis of any defect in removal procedure" may, within 30 days, file a motion asking the district court to remand the case to state court. § 1447(c). This 30-day limit does not apply, however, to jurisdictional defects: "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." *Ibid.*[6]

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served as defendants is a citizen of the State in which such action is brought."

[5] In full, 28 U. S. C. § 1446(b) provides:

"The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

"If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action."

[6] In relevant part, 28 U. S. C. § 1447(c) provides:

"A motion to remand the case on the basis of any defect in removal procedure must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case

III

We note, initially, two "givens" in this case as we have accepted it for review. First, the District Court, in its decision denying Lewis' timely motion to remand, incorrectly treated Whayne Supply, the nondiverse defendant, as effectively dropped from the case prior to removal. See App. 55. Second, the Sixth Circuit correctly determined that the complete diversity requirement was not satisfied at the time of removal. App. to Pet. for Cert. 8a–9a.[7] We accordingly home in on this question: Does the District Court's initial misjudgment still burden and run with the case, or is it overcome by the eventual dismissal of the nondiverse defendant?

Petitioner Caterpillar relies heavily on our decisions in *American Fire & Casualty Co.* v. *Finn*, 341 U. S. 6 (1951), and *Grubbs* v. *General Elec. Credit Corp.*, 405 U. S. 699 (1972), urging that these decisions "long ago settled the proposition that remand to the state court is unnecessary even if jurisdiction did not exist at the time of removal, so long as the district court had subject matter jurisdiction at the time of judgment." Brief for Petitioner 8–9. Caterpillar is right that *Finn* and *Grubbs* are key cases in point and tend in Caterpillar's favor. Each suggests that the existence of subject-matter jurisdiction at time of judgment may shield a judgment against later jurisdictional attack. But neither decision resolves dispositively a controversy of the kind we face, for neither involved a plaintiff who moved

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shall be remanded. . . . The State court may thereupon proceed with such case."

[7] Caterpillar's petition for certiorari raised the question whether the subrogation claim asserted by Liberty Mutual, and thus the citizenship of Whayne Supply, should be disregarded for purposes of determining diversity of citizenship, in view of the settlement agreed upon between Lewis and Whayne Supply. See Pet. for Cert. i, 18–23. Our order granting review did not encompass that question, see 517 U. S. 1133 (1996), and we express no opinion on it.

promptly, but unsuccessfully, to remand a case improperly removed from state court to federal court, and then challenged on appeal a judgment entered by the federal court.

In *Finn,* two defendants removed a case to federal court on the basis of diversity of citizenship. 341 U. S., at 7–8. Eventually, final judgment was entered for the plaintiff against one of the removing defendants. *Id.,* at 8. The losing defendant urged on appeal, and before this Court, that the judgment could not stand because the requisite diversity jurisdiction, it turned out, existed neither at the time of removal nor at the time of judgment. Agreeing with the defendant, we held that the absence of federal jurisdiction at the time of judgment required the Court of Appeals to vacate the District Court's judgment. *Id.,* at 17–18.[8]

Finn's holding does not speak to the situation here, where the requirement of complete diversity was satisfied at the time of judgment. But Caterpillar points to well-known dicta in *Finn* more helpful to its cause. "There are cases," the Court observed, "which uphold judgments in the district courts even though there was no right to removal." *Id.,* at 16.[9] "In those cases," the *Finn* Court explained, "the federal trial court would have had original jurisdiction of the controversy had it been brought in the federal court in the posture it had at the time of the actual trial of the cause or of the entry of the judgment." *Ibid.*

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[8] The Court left open in *Finn* the question whether, on remand to the District Court, "a new judgment [could] be entered on the old verdict without a new trial" if the nondiverse defendant were dismissed from the case. 341 U. S., at 18, n. 18. In the litigation's second round, the District Court allowed the plaintiff to dismiss all claims against the nondiverse defendant. See *Finn* v. *American Fire & Casualty Co.,* 207 F. 2d 113, 114 (CA5 1953), cert. denied, 347 U. S. 912 (1954). Thereafter, the District Court granted a new trial, on the assumption that the original judgment could not stand for lack of jurisdiction. See 207 F. 2d, at 114. Ultimately, the Court of Appeals for the Fifth Circuit set aside the judgment entered after the second trial and ordered the original judgment reinstated. *Id.,* at 117.

[9] The Court cited *Baggs* v. *Martin,* 179 U. S. 206 (1900), and three lower federal-court cases. *Finn,* 341 U. S., at 16, n. 14.

The discussion in *Finn* concentrated on cases in which courts held *removing defendants* estopped from challenging final judgments on the basis of removal errors. See *id.*, at 17. The *Finn* Court did not address the situation of a plaintiff such as Lewis, who chose a state court as the forum for his lawsuit, timely objected to removal before the District Court, and then challenged the removal on appeal from an adverse judgment.

In *Grubbs,* a civil action filed in state court was removed to federal court on the petition of the United States, which had been named as a party defendant in a "cross-action" filed by the original defendant. 405 U. S., at 700–701; see 28 U. S. C. § 1444 (authorizing removal of actions brought against the United States, pursuant to 28 U. S. C. § 2410, with respect to property on which the United States has or claims a lien). No party objected to the removal before trial or judgment. See *Grubbs,* 405 U. S., at 701. The Court of Appeals nonetheless held, on its own motion, that the "interpleader" of the United States was spurious, and that removal had therefore been improper under 28 U. S. C. § 1444. See *Grubbs,* 405 U. S., at 702. On this basis, the Court of Appeals concluded that the District Court's judgment should be vacated and the case remanded to state court. See *ibid.*

This Court reversed. *Id.*, at 700. We explained:

> "Longstanding decisions of this Court make clear . . . that where after removal a case is tried on the merits without objection and the federal court enters judgment, the issue in subsequent proceedings on appeal is not whether the case was properly removed, but whether the federal district court would have had original jurisdiction of the case had it been filed in that court." *Id.*, at 702.

We concluded that, "whether or not the case was properly removed, the District Court did have jurisdiction of the parties at the time it entered judgment." *Id.*, at 700. "Under such circumstances," we held, "the validity of the removal procedure followed *may not be raised for the first time on appeal.*" *Ibid.* (emphasis added). *Grubbs* instructs that an erroneous removal need not cause the destruction of a final judgment, if the requirements of federal subject-matter jurisdiction are met at the time the judgment is entered. *Grubbs,* however, dealt with a case removed without objection. The decision is not dispositive of the question whether a plaintiff, who timely objects to removal, may later successfully challenge an adverse judgment on the ground that the removal did not comply with statutory prescriptions.

Beyond question, as Lewis acknowledges, there was in this case complete diversity, and therefore federal subject-matter jurisdiction, at the time of trial and judgment. See Brief for Respondent 18–19 (diversity became complete "when Liberty Mutual settled its subrogation claim with Whayne Supply and the latter was formally dismissed from the case"). The case had by then become, essentially, a two-party lawsuit: Lewis, a citizen of Kentucky, was the sole plaintiff; Caterpillar, incorporated in Delaware with its principal place of business in Illinois, was the sole defendant Lewis confronted. Caterpillar maintains that this change cured the threshold *statutory* misstep, *i. e.*, the removal of a case when diversity was incomplete. Brief for Petitioner 7, 13.

Caterpillar moves too quickly over the terrain we must cover. The *jurisdictional* defect was cured, *i. e.*, complete diversity was established before the trial commenced. Therefore, the Sixth Circuit erred in resting its decision on the absence of subject-matter jurisdiction. But a statutory flaw—Caterpillar's failure to meet the § 1441(a) requirement that the case be fit for federal adjudication at the time the removal petition is filed—remained in the unerasable history of the case.

And Lewis, by timely moving for remand, did all that was required to preserve his objection to removal. An order denying a motion to remand, "standing alone," is "[o]bviously . . . not final and [immediately] appealable" as of right. *Chicago, R. I. & P. R. Co.* v. *Stude,* 346 U. S. 574, 578 (1954). Nor is a plaintiff required to seek permission to take an interlocutory appeal pursuant to 28 U. S. C. § 1292(b)[10] in order to avoid waiving whatever ultimate appeal right he may have.[11] Indeed, if a party had to invoke § 1292(b) in order to preserve an objection to an interlocutory ruling, litigants would be obliged to seek § 1292(b) certifications constantly. Routine resort to § 1292(b) requests would hardly comport with Congress' design to reserve interlocutory review for "'exceptional'" cases while generally retaining for the federal courts a firm final judgment rule. *Coopers & Lybrand* v. *Livesay,* 437 U. S. 463, 475 (1978) (quoting *Fisons, Ltd.* v. *United States,* 458 F. 2d 1241, 1248 (CA7), cert. denied, 405 U. S. 1041 (1972)).

Having preserved his objection to an improper removal, Lewis urges that an "all's well that ends well" approach is inappropriate here. He maintains that ultimate satisfaction of the subject-matter jurisdiction requirement ought not swallow up antecedent statutory violations. The course Caterpillar advocates, Lewis observes, would disfavor diligent plaintiffs who timely, but unsuccessfully, move to check improper removals in district court. Further, that course would allow improperly removing defendants to profit from their disregard of Congress' instructions, and their ability to lead district judges into error.

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[10] Section 1292(b) provides for interlocutory appeals from otherwise not immediately appealable orders, if conditions specified in the section are met, the district court so certifies, and the court of appeals exercises its discretion to take up the request for review.

[11] On brief, Caterpillar argued that "Lewis effectively waived his objection to removal by failing to seek an immediate appeal of the district court's refusal to remand." Brief for Petitioner 13. We reject this waiver argument, though we recognize that it has attracted some support in Court of Appeals opinions. See, *e. g., Able* v. *Upjohn Co.,* 829 F. 2d 1330, 1333–1334 (CA4 1987), cert. denied, 485 U. S. 963 (1988).

Concretely, in this very case, Lewis emphasizes, adherence to the rules Congress prescribed for removal would have kept the case in state court. Only by removing prematurely was Caterpillar able to get to federal court inside the one-year limitation set in § 1446(b).[12] Had Caterpillar waited until the case was ripe for removal, *i. e.*, until Whayne Supply was dismissed as a defendant, the one-year limitation would have barred the way,[13] and plaintiff's choice of forum would have been preserved.[14]

These arguments are hardly meritless, but they run up against an overriding consideration. Once a diversity case has been tried in federal court, with rules of decision supplied by state law under the regime of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938), considerations of finality, efficiency, and economy become overwhelming.

Our decision in *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U. S. 826 (1989), is instructive in this regard. *Newman-Green* did not involve removal, but it did involve the federal courts' diversity jurisdiction and a party defendant whose presence, like Whayne Supply's in this case, blocked complete diversity. *Newman-Green* proceeded to summary judgment with the jurisdictional flaw—the absence of complete diversity—undetected. See *id.*, at 828–829. The Court of Appeals noticed the flaw, invited the parties to address it, and, en banc, returned the case to the District Court "to determine whether it would be prudent to drop [the jurisdiction spoiler] from the litigation." *Id.*, at 830. We held that the Court of Appeals itself had authority "to dismiss a dispensable nondiverse party," although we recognized that, ordinarily, district courts are better positioned to make such judgments. *Id.*, at 837–838. "[R]equiring dismissal after years of litigation," the Court stressed in *Newman-Green*, "would impose unnecessary and wasteful burdens on the parties, judges, and other litigants waiting for judicial attention." *Id.*, at 836. The same may be said of the remand to state court Lewis seeks here. Cf. *Knop* v. *McMahan*, 872 F. 2d 1132, 1139, n. 16 (CA3 1989) ("To permit a case in which there is complete diversity throughout trial to proceed to judgment and then cancel the effect of that judgment and relegate the parties to a new trial in a state court because of a brief lack of complete diversity at the beginning of the case would be a waste of judicial resources.").

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[12] Congress amended § 1446(b) in 1988 to include the one-year limitation in order to "reduc[e] the opportunity for removal after substantial progress has been made in state court." H. R. Rep. No. 100–889, p. 72 (1988).

[13] On appeal, Lewis raised only the absence of diversity. He did not refer to the one-year limitation prior to his brief on the merits in this Court. See Tr. of Oral Arg. 17, 30–31. Under this Court's Rule 15.2, a nonjurisdictional argument not raised in a respondent's brief in opposition to a petition for a writ of certiorari "may be deemed waived." Under the facts of this case, however, addressing the implications of § 1446(b)'s one-year limitation is "'predicate to an intelligent resolution' of the question presented." *Ohio* v. *Robinette*, *ante*, at 38 (quoting *Vance* v. *Terrazas*, 444 U. S. 252, 258–259, n. 5 (1980)). We therefore regard the issue as one "fairly included" within the question presented. This Court's Rule 14.1. The parties addressed the issue in their briefs and at oral argument, and we exercise our discretion to decide it.

[14] Lewis preferred state court to federal court based on differences he perceived in, *inter alia*, the state and federal jury systems and rules of evidence. See Brief for Respondent 22–23.

Our view is in harmony with a main theme of the removal scheme Congress devised. Congress ordered a procedure calling for expeditious superintendence by district courts. The lawmakers specified a short time, 30 days, for motions to remand for defects in removal procedure, 28 U. S. C. § 1447(c), and district court orders remanding cases to state courts generally are "not reviewable on appeal or otherwise," § 1447(d). Congress did not similarly exclude appellate review of refusals to remand. But an evident concern that may explain the lack of symmetry relates to the federal courts' subject-matter jurisdiction. Despite a federal trial court's threshold denial of a motion to remand, if, at the end of the day and case, a *jurisdictional* defect remains uncured, the judgment must be vacated. See Fed. Rule Civ. Proc. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."); *Finn*, 341 U. S., at 18. In this case, however, no jurisdictional defect lingered through judgment in the District Court. To wipe out the adjudication postjudgment, and return to state court a case now satisfying all federal jurisdictional requirements, would impose an exorbitant cost on our dual court system, a cost incompatible with the fair and unprotracted administration of justice.

Lewis ultimately argues that, if the final judgment against him is allowed to stand, "all of the various procedural requirements for removal will become unenforceable"; therefore, "defendants will have an enormous incentive to attempt wrongful removals." Brief for Respondent 9. In particular, Lewis suggests that defendants will remove prematurely "in the hope that some subsequent developments, such as the eventual dismissal of nondiverse defendants, will permit th[e] case to be kept in federal court." *Id.*, at 21. We do not anticipate the dire consequences Lewis forecasts.

The procedural requirements for removal remain enforceable by the federal trial court judges to whom those requirements are directly addressed. Lewis' prediction that rejection of his petition will "encourag[e] state court defendants to remove cases improperly," *id.*, at 19, rests on an assumption we do not indulge—that district courts generally will not comprehend, or will balk at applying, the rules on removal Congress has prescribed. The prediction furthermore assumes defendants' readiness to gamble that any jurisdictional defect, for example, the absence of complete diversity, will first escape detection, then disappear prior to judgment. The well-advised defendant, we are satisfied, will foresee the likely outcome of an unwarranted removal—a swift and nonreviewable remand order, see 28 U. S. C.

§§ 1447(c), (d), attended by the displeasure of a district court whose authority has been improperly invoked. The odds against any gain from a wrongful removal, in sum, render improbable Lewis' projection of increased resort to the maneuver.

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For the reasons stated, the judgment of the Court of Appeals is reversed, and the case is remanded for proceedings consistent with this opinion.

It is so ordered.

O'GILVIE ET AL., MINORS *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 95–966. Argued October 9, 1996—Decided December 10, 1996*

Petitioners, the husband and two children of a woman who died of toxic shock syndrome, received a jury award of $1,525,000 actual damages and $10 million punitive damages in a tort suit based on Kansas law against the maker of the product that caused decedent's death. They paid federal income tax insofar as the award's proceeds represented punitive damages, but immediately sought a refund. Procedurally speaking, this litigation represents the consolidation of two cases brought in the same Federal District Court: the husband's suit against the Government for a refund, and the Government's suit against the children to recover the refund that the Government had made to the children earlier. The District Court found for petitioners under 26 U. S. C. § 104(a)(2), which, as it read in 1988, excluded from "gross income" the "*amount of any damages received . . . on account of personal injuries or sickness.*" (Emphasis added.) The court held on the merits that the italicized language includes punitive damages, thereby excluding such damages from gross income. The Tenth Circuit reversed, holding that the exclusionary provision does not cover punitive damages.

Held:

1. Petitioners' punitive damages were not received "*on account of*" personal injuries; hence the gross-income-exclusion provision does not apply and the damages are taxable. Pp. 82–90.

(a) Although the phrase "on account of" does not unambiguously define itself, several factors prompt this Court to agree with the Government when it interprets the exclusionary provision to apply to those personal injury lawsuit damages that were awarded by reason of, or because of, the personal injuries, and not to punitive damages that do not compensate injury, but are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence. For one thing, the Government's interpretation gives the phrase "on account of" a meaning consistent with the dictionary definition. More important, in *Commissioner* v. *Schleier,* 515 U. S. 323, this Court came close to resolving the statute's ambiguity in the Government's favor when it

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*Together with No. 95–977, *O'Gilvie* v. *United States,* also on certiorari to the same court.

said that the statute covers pain and suffering damages, medical expenses, and lost wages in an ordinary tort case because they are "designed to compensate . . . victims," *id.*, at 332, n. 5, but does not apply to elements of damages that are "punitive in nature," *id.*, at 332. The Government's reading also is more faithful to the statutory provision's history and basic tax-related purpose of excluding compensatory damages that restore a victim's lost, nontaxable "capital." Petitioners suggest no very good reason *why* Congress might have wanted the exclusion to have covered these punitive damages, which are not a substitute for any normally untaxed personal (or financial) quality, good, or "asset" and do not compensate for any kind of loss. Pp. 82–87.

(b) Petitioners' three arguments to the contrary—that certain words or phrases in the original, or current, version of the statute work in their favor; that the exclusion of punitive damages from gross income may be justified by Congress' desire to be generous to tort victims and to avoid such administrative problems as separating punitive from compensatory portions of a global settlement or determining the extent to which a punitive damages award is itself intended to compensate; and that their position is supported by a 1989 statutory amendment that specifically says that the gross income exclusion does not apply to any punitive damages in connection with a case not involving physical injury or sickness—are not sufficiently persuasive to overcome the Government's interpretation. Pp. 87–90.

2. Petitioners' two case-specific procedural arguments—that the Government's lawsuit was untimely and that its original notice of appeal was filed a few days late—are rejected. Pp. 90–92.

66 F. 3d 1550, affirmed.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, KENNEDY, SOUTER, and GINSBURG, JJ., joined. SCALIA, J., filed a dissenting opinion, in which O'CONNOR and THOMAS, JJ., joined, *post*, p. 94.

Stephen R. McAllister argued the cause for petitioners in No. 95–966. With him on the briefs were *Robert M. Hughes*, *Jack D. Flesher*, *Gregory L. Franken*, and *David B. Sutton*. *Linda D. King* argued the cause and filed briefs for petitioner in No. 95–977.

Kent L. Jones argued the cause for the United States. With him on the briefs were *Solicitor General Days*, *Acting Solicitor General Dellinger*, *Assistant Attorney General*

Argrett, Deputy Solicitor General Wallace, Kenneth L. Greene, and *Kenneth W. Rosenberg.*

JUSTICE BREYER delivered the opinion of the Court.

Internal Revenue Code § 104(a)(2), as it read in 1988, excluded from "gross income" the

> "amount of any *damages received* (whether *by suit* or agreement and whether as lump sums or as periodic payments) *on account of personal injuries or sickness.*" 26 U. S. C. § 104(a)(2) (emphasis added).

The issue before us is whether this provision applies to (and thereby makes nontaxable) punitive damages received by a plaintiff in a tort suit for personal injuries. We conclude that the punitive damages received here were not received "*on account of*" personal injuries; hence the provision does not apply, and the damages are taxable.

I

Petitioners in this litigation are the husband and two children of Betty O'Gilvie, who died in 1983 of toxic shock syndrome. Her husband, Kelly, brought a tort suit (on his own behalf and that of her estate) based on Kansas law against the maker of the product that caused Betty O'Gilvie's death. Eventually, he and the two children received the net proceeds of a jury award of $1,525,000 actual damages and $10 million punitive damages. Insofar as the proceeds represented punitive damages, petitioners paid income tax on the proceeds but immediately sought a refund.

The litigation before us concerns petitioners' legal entitlement to that refund. Procedurally speaking, the litigation represents the consolidation of two cases brought in the same Federal District Court: Kelly's suit against the Government for a refund, and the Government's suit against the children to recover the refund that the Government had made to the children earlier. 26 U. S. C. § 7405(b) (authorizing suits by the United States to recover refunds erroneously made). The Federal District Court held on the merits that the statutory phrase "damages . . . on account of personal injury or sickness" includes punitive damages, thereby excluding punitive damages from gross income and entitling Kelly to obtain, and the children to keep, their refund. The Court of Appeals for the Tenth Circuit, however, reversed the District Court. Along with the Fourth, Ninth, and Federal Circuits, it held that the exclusionary provision does not cover punitive damages. 66 F. 3d 1550 (1995). Because the Sixth Circuit has held the contrary, the Circuits are divided about the proper interpretation of the provision. We granted certiorari to resolve this conflict.

II

Petitioners received the punitive damages at issue here "by suit"—indeed "by" an ordinary "suit" for "personal injuries." Contrast *United States* v. *Burke,* 504 U. S. 229 (1992) (§ 104(a)(2) exclusion not applicable to backpay awarded under Title VII of the Civil Rights Act of 1964 because the claim was not based upon " 'tort or tort type rights,' " *id.,* at 233); *Commissioner* v. *Schleier,* 515 U. S. 323 (1995) (alternative holding) (Age Discrimination in Employment Act of 1967 (ADEA) claim is similar to Title VII claim in *Burke* in this respect). These legal circumstances bring those damages within the gross-income-exclusion provision, however, only if petitioners also "received" those damages "*on account of*" the "personal injuries." And the phrase "on account of" does not unambiguously define itself.

On one linguistic interpretation of those words, that of petitioners, they require no more than a "but-for" connection between "any" damages and a lawsuit for personal injuries. They would thereby bring virtually all personal injury lawsuit damages within the scope of the provision, since: "but for the personal injury, there would be no lawsuit, and but for the lawsuit, there would be no damages."

On the Government's alternative interpretation, however, those words impose a stronger causal connection, making the provision applicable only to those personal injury lawsuit damages that were awarded by reason of, or because of, the personal injuries. To put the matter more specifically, they would make the section inapplicable to punitive damages, where those damages

> "'are not compensation for injury [but] [i]nstead . . . are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence.'" *Electrical Workers* v. *Foust,* 442 U. S. 42, 48 (1979), quoting *Gertz* v. *Robert Welch, Inc.,* 418 U. S. 323, 350 (1974) (footnote omitted).

The Government says that such damages were not "received . . . on account of" the personal injuries, but rather were awarded "on account of" a defendant's reprehensible conduct and the jury's need to punish and to deter it. Hence, despite some historical uncertainty about the matter, see Rev. Rul. 75–45, 1975–1 Cum. Bull. 47, revoked by Rev. Rul. 84–108, 1984–2 Cum. Bull. 32, the Government now concludes that these punitive damages fall outside the statute's coverage.

We agree with the Government's interpretation of the statute. For one thing, its interpretation gives the phrase "on account of" a meaning consistent with the dictionary definition. See, *e. g.,* Webster's Third New International Dictionary 13 (1981) ("for the sake of: by reason of: because of").

More important, in *Schleier, supra,* we came close to resolving the statute's ambiguity in the Government's favor. That case did not involve damages received in an ordinary tort suit; it involved liquidated damages and backpay received in a settlement of a lawsuit charging a violation of the ADEA. Nonetheless, in deciding one of the issues there presented (whether the provision now before us covered ADEA liquidated damages), we contrasted the elements of an ordinary tort recovery with ADEA liquidated damages. We said that pain and suffering damages, medical expenses, and lost wages in an ordinary tort case are covered by the statute and hence excluded from income

> "not simply because the taxpayer received a tort settlement, but rather because each element . . . satisfies the requirement . . . that the damages were received 'on account of personal injuries or sickness.'" *Id.*, at 330.

In holding that ADEA liquidated damages are not covered, we said that they are not "designed to compensate ADEA victims," *id.*, at 332, n. 5; instead, they are "'punitive in nature,'" *id.*, at 332, quoting *Trans World Airlines, Inc.* v. *Thurston*, 469 U. S. 111, 125 (1985).

Applying the same reasoning here would lead to the conclusion that the punitive damages are not covered because they are an element of damages not "designed to compensate . . . victims," *Schleier*, 515 U. S., at 332; rather they are "'punitive in nature,'" *ibid.* Although we gave other reasons for our holding in *Schleier* as well, we explicitly labeled this reason an "independent" ground in support of our decision, *id.*, at 334. We cannot accept petitioners' claim that it was simply a dictum.

We also find the Government's reading more faithful to the history of the statutory provision as well as the basic tax-related purpose that the history reveals. That history begins in approximately 1918. At that time, this Court had recently decided several cases based on the principle that a restoration of capital was not income; hence it fell outside the definition of "income" upon which the law imposed a tax. *E. g., Doyle* v. *Mitchell Brothers Co.*, 247 U. S. 179, 187 (1918); *Southern Pacific Co.* v. *Lowe*, 247 U. S. 330, 335 (1918). The Attorney General then advised the Secretary of the Treasury that proceeds of an accident insurance policy should be treated as nontaxable because they primarily

> "substitute . . . capital which is the source of *future* periodical income . . . merely tak[ing] the place of capital in human ability which was destroyed by the accident. They are therefore [nontaxable] 'capital' as distinguished from 'income' receipts." 31 Op. Atty. Gen. 304, 308 (1918).

The Treasury Department added that

> "upon similar principles . . . an amount received by an individual as the result of a suit or compromise for personal injuries sustained by him through accident is not income [that is] taxable. . . ." T. D. 2747, 20 Treas. Dec. Int. Rev. 457 (1918).

Soon thereafter, Congress enacted the first predecessor of the provision before us. That provision excluded from income

> "[a]mounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness." Revenue Act of 1918, ch. 18, § 213(b)(6), 40 Stat. 1066.

The provision is similar to the cited materials from the Attorney General and the Secretary of the Treasury in language and structure, all of which suggests that Congress sought, in enacting the statute, to codify the Treasury's basic approach. A contemporaneous House Report, insofar as relevant, confirms this similarity of approach, for it says:

> "Under the present law it is doubtful whether amounts received through accident or health insurance, or under workmen's compensation acts, as compensation for personal injury or sickness, and damages received on account of such injuries or sickness, are required to be included in gross income. The proposed bill provides

> that such amounts shall not be included in gross income." H. R. Rep. No. 767, pp. 9–10 (1918).

This history and the approach it reflects suggest there is no strong reason for trying to interpret the statute's language to reach beyond those damages that, making up for a loss, seek to make a victim whole, or, speaking very loosely, "return the victim's personal or financial capital."

We concede that the original provision's language does go beyond what one might expect a purely tax-policy-related "human capital" rationale to justify. That is because the language excludes from taxation not only those damages that aim to substitute for a victim's physical or personal well-being—personal assets that the Government does not tax and would not have taxed had the victim not lost them. It also excludes from taxation those damages that substitute, say, for lost wages, which would have been taxed had the victim earned them. To that extent, the provision can make the compensated taxpayer better off from a tax perspective than had the personal injury not taken place.

But to say this is not to support cutting the statute totally free from its original moorings in victim loss. The statute's failure to separate those compensatory elements of damages (or accident insurance proceeds) one from the other does not change its original focus upon damages that restore a loss, that seek to make a victim whole, with a tax-equality objective providing an important part of, even if not the entirety of, the statute's rationale. All this is to say that the Government's interpretation of the current provision (the wording of which has not changed significantly from the original) is more consistent than is petitioners' with the statute's original focus.

Finally, we have asked *why* Congress might have wanted the exclusion to have covered these punitive damages, and we have found no very good answer. Those damages are not a substitute for any normally untaxed personal (or financial) quality, good, or "asset." They do not compensate for any kind of loss. The statute's language does not require, or strongly suggest, their exclusion from income. And we can find no evidence that congressional generosity or concern for administrative convenience stretched beyond the bounds of an interpretation that would distinguish compensatory from noncompensatory damages.

Of course, as we have just said, from the perspective of tax policy one might argue that noncompensatory punitive damages and, for example, compensatory lost wages are much the same thing. That is, in both instances, exclusion from gross income provides the taxpayer with a windfall. This circumstance alone, however, does not argue strongly for an interpretation that covers punitive damages, for coverage of compensatory damages has both language and history in its favor to a degree that coverage of noncompensatory punitive damages does not. Moreover, this policy argument assumes that coverage of lost wages is something of an anomaly; if so, that circumstance would not justify the extension of the anomaly or the creation of another. See Wolfman, Current Issues of Federal Tax Policy, 16 U. Ark. Little Rock L. J. 543, 549–550 (1994) ("[T]o build upon" what is, from a tax policy perspective, the less easily explained portion "of the otherwise rational exemption for personal injury," simply "does not make sense").

Petitioners make three sorts of arguments to the contrary. First, they emphasize certain words or phrases in the original, or current, provision that work in their favor. For example, they stress the word "any" in the phrase "any damages." And they note that in both original and current versions Congress referred to certain amounts of money received (from workmen's compensation, for example) as "amounts received . . . as compensation," while here they refer only to "damages received" without adding the limiting phrase "as compensation." 26 U. S. C. § 104(a); Revenue Act of 1918, § 213(b)(6), 40 Stat. 1066. They add that in the original version, the words "on account of personal injuries" might have referred to, and modified, the kind of lawsuit, not the kind of damages. And they find support for this view in the second sentence of the Treasury Regulation first adopted in 1958 which says:

> "The term 'damages received (whether by suit or agreement)' means an amount received (other than workmen's compensation) through prosecution of a legal suit or action based upon tort or tort type rights, or through a settlement agreement entered into in lieu of such prosecution." 26 CFR § 1.104–1(c) (1996).

These arguments, however, show only that one can reasonably read the statute's language in different ways—the very assumption upon which our analysis rests. They do not overcome our interpretation of the provision in *Schleier*, nor do they change the provision's history. The help that the Treasury Regulation's second sentence gives the petitioners is offset by its *first* sentence, which says that the exclusion applies to damages received "on account of personal injuries or sickness," and which we have held sets forth an independent requirement. *Schleier*, 515 U. S., at 336. See Appendix, *infra*, at 92.

Second, petitioners argue that to some extent the purposes that might have led Congress to exclude, say, lost wages from income would also have led Congress to exclude punitive damages, for doing so is both generous to victims and avoids such administrative problems as separating punitive from compensatory portions of a global settlement or determining the extent to which a punitive damages award is itself intended to compensate.

Our problem with these arguments is one of degree. Tax generosity presumably has its limits. The administrative problem of distinguishing punitive from compensatory elements is likely to be less serious than, say, distinguishing among the compensatory elements of a settlement (which difficulty might account for the statute's treatment of, say, lost wages). And, of course, the problem of identifying the elements of an ostensibly punitive award does not exist where, as here, relevant state law makes clear that the damages at issue are not at all compensatory, but entirely punitive. *Brewer* v. *Home-Stake Production Co.*, 200 Kan. 96, 100, 434 P. 2d 828, 831 (1967) ("[E]xemplary damages are not regarded as compensatory in any degree"); accord, *Smith* v. *Printup*, 254 Kan. 315, 866 P. 2d 985 (1993); *Folks* v. *Kansas Power & Light Co.*, 243 Kan. 57, 755 P. 2d 1319 (1988); *Nordstrom* v. *Miller*, 227 Kan. 59, 605 P. 2d 545 (1980).

Third, petitioners rely upon a later enacted law. In 1989, Congress amended the law so that it now specifically says the personal injury exclusion from gross income

> "shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness." 26 U. S. C. § 104(a).

Why, petitioners ask, would Congress have enacted this amendment removing punitive damages (in nonphysical injury cases) unless Congress believed that, in the amendment's absence, punitive damages did fall within the provision's coverage?

The short answer to this question is that Congress might simply have thought that the then-current law about the provision's treatment of punitive damages—in cases of physical and nonphysical injuries—was unclear, that it wanted to clarify the matter in respect to nonphysical injuries, but it wanted to leave the law where it found it in respect to physical injuries. The fact that the law was indeed uncertain at the time supports this view. Compare Rev. Rul. 84–108, 1984–2 Cum. Bull. 32, with, *e. g., Roemer* v. *Commissioner*, 716 F. 2d 693 (CA9 1983); *Miller* v. *Commissioner*, 93 T. C. 330 (1989), rev'd 914 F. 2d 586 (CA4 1990).

The 1989 amendment's legislative history, insofar as relevant, offers further support. The amendment grew out of the Senate's refusal to agree to a House bill that would have made *all* damages in nonphysical personal injury cases taxable. The Senate was willing to specify only that the Government could tax punitive damages in such cases. Compare H. R. Rep. No. 101–247, p. 1355 (1989), with H. R. Conf. Rep. No. 101–386, pp. 622–623 (1989). Congress' primary focus, in other words, was upon what to do about nonphysical personal injuries, not upon the provision's coverage of punitive damages under pre-existing law.

We add that, in any event, the view of a later Congress cannot control the interpretation of an earlier enacted statute. *United States* v. *Price*, 361 U. S. 304 (1960); *Higgins* v. *Smith*, 308 U. S. 473 (1940). But cf. *Burke*, 504 U. S., at 235, n. 6 (including a passing reference to the 1989 amendment, in dicta, as support for a view somewhat like that of petitioners).

(Although neither party has argued that it is relevant, we note in passing that § 1605 of the Small Business Job Protection Act of 1996, Pub. L. 104–188, 110 Stat. 1838, explicitly excepts most punitive damages from the exclusion provided by § 104(a)(2). Because it is of prospective application, the section does not apply here. The Conference Report on the new law says that "[n]o inference is intended" as to the proper interpretation of § 104(a)(2) prior to amendment. H. R. Conf. Rep. No. 104–737, p. 301 (1996).)

The upshot is that we do not find petitioners' arguments sufficiently persuasive. And, for the reasons set out *supra*, at 83–87, we agree with the Government's interpretation of the statute.

III

Petitioners have raised two further issues, specific to the procedural posture of this litigation. First, the O'Gilvie children point out that the Government had initially accepted their claim for a refund and wrote those checks on July 6, 1990. The Government later changed its mind and, on July 9, 1992, two years plus three days later, filed suit against them seeking the return of a refund erroneously made. 26 U. S. C. § 7405(b) (authorizing a "civil action brought in the name of the United States" to recover any "portion of a tax . . . which has been erroneously refunded"). They add that the relevant statute of limitations specifies that recovery of the refund "shall be allowed only if such suit is begun within 2 years after the making of such refund." § 6532(b).

The children concede that they *received* the refund checks on July 9, 1990, and they agree that if the limitation period runs from the date of receipt—if, as the Government argues, that is the date of the "making of" the refund—the Government's suit was timely. But the children say that the refund was made on, and the limitations period runs from, the date the Government *mailed* the checks (presumably July 6, 7, or 8), in which case the Government brought this suit one or two or three days too late.

In our view, the Government is correct in its claim that its lawsuit was timely. The language of the statute admits of both interpretations. But the law ordinarily provides that an action to recover mistaken payments of money "accrues upon the receipt of payment," *New Bedford* v. *Lloyd Investment Associates, Inc.*, 363 Mass. 112, 119, 292 N. E. 2d 688, 692 (1973); accord, *Sizemore* v. *E. T. Barwick Industries, Inc.*, 225 Tenn. 226, 233, 465 S. W. 2d 873, 876 (1971) ("'[T]he time of making the . . . payment . . . was the date of actual receipt'"), unless, as in some States and in some cases, it accrues upon the still later date of the mistake's discovery, see Allen & Lamkin, When Statute of Limitations Begins to Run Against Action to Recover Money Paid By Mistake, 79 A. L. R. 3d 754, 766–769 (1977). We are not aware of any good reason why Congress would have intended a different result where the nature of the claim is so similar to a traditional action for money paid by mistake—an action the roots of which can be found in the old common-law claim of "assumpsit" or "money had and received." *New Bedford*, *supra*, at 118, 292 N. E. 2d, at 691–692. The lower courts and commentators have reached a similar conclusion. *United States* v. *Carter*, 906 F. 2d 1375 (CA9 1990); *Akers* v. *United States*, 541 F. Supp. 65, 67 (MD Tenn. 1981); *United*

States v. *Woodmansee,* 388 F. Supp. 36, 46 (ND Cal. 1975), rev'd on other grounds, 578 F. 2d 1302 (CA9 1978); 14 J. Mertens Law of Federal Income Taxation § 54A.69 (1995); Kafka & Cavanagh, Litigation of Federal Civil Tax Controversies § 20.03, p. 20–15 (2d ed. 1995). That conclusion is consistent with dicta in an earlier case from this Court, *United States* v. *Wurts,* 303 U. S. 414, 417–418 (1938), as well as with this Court's normal practice of construing ambiguous statutes of limitations in Government action in the Government's favor. *E. g., Badaracco* v. *Commissioner,* 464 U. S. 386, 391 (1984).

We concede the children's argument that a "date of mailing" interpretation produces marginally greater certainty, for such a rule normally would refer the court to the postmark to establish the date. But there is no indication that a "date of receipt" rule has proved difficult to administer in ordinary state or common-law actions for money paid erroneously. The date the check clears, after all, sets an outer bound.

Second, Kelly O'Gilvie says that the Court of Appeals should not have considered the Government's original appeal from the District Court's judgment in his favor because, in his view, the Government filed its notice of appeal a few days too late. The Court of Appeals describes the circumstances underlying this case-specific issue in its opinion. We agree with its determination of the matter for the reasons it has there set forth.

The judgment of the Court of Appeals is

Affirmed.

APPENDIX TO OPINION OF THE COURT

Section 104(a), in 1988, read as follows:

> "Compensation for injuries or sickness
>
> "(a) In general.—Except in the case of amounts attributable to (and not in excess of) deductions allowed under

> section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include—
>
> "(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;
>
> "(2) the amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness;
>
> "(3) amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);
>
> "(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980; and
>
> "(5) amounts received by an individual as disability income attributable to injuries incurred as a direct result of a violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States." 26 U. S. C. § 104 (1988 ed.).

In 1989, § 104(a) was amended, adding, among other things, the following language:

> "Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness." 26 U. S. C. § 104(a).

Treasury Regulation § 1.104–1(c) provides:

> "Section 104(a)(2) excludes from gross income the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness. The term 'damages received (whether by suit or agreement)' means an amount received (other than workmen's compensation) through prosecution of a legal suit or action based upon tort or tort type rights, or through a settlement agreement entered into in lieu of such prosecution." 26 CFR § 1.104–1(c) (1996).

JUSTICE SCALIA, with whom JUSTICE O'CONNOR and JUSTICE THOMAS join, dissenting.

Section 104(a)(2), as it stood at the time relevant to these cases, provided an exclusion from income for "any damages received . . . on account of personal injuries or sickness." 26 U. S. C. § 104(a)(2) (1988 ed.). The Court is of the view that this phrase, in isolation, is just as susceptible of a meaning that includes only compensatory damages as it is of a broader meaning that includes punitive damages as well. *Ante,* at 82–83. I do not agree. The Court greatly understates the connection between an award of punitive damages and the personal injury complained of, describing it as nothing more than "but-for" causality, *ante,* at 82. It seems to me that the personal injury is as proximate a cause of the punitive damages as it is of the compensatory damages; in both cases it is the *reason* the damages are awarded. That is *why* punitive damages are called *damages.* To be sure, punitive damages require intentional, blameworthy conduct, which can be said to be a coequal reason they are awarded. But negligent (or intentional) conduct occupies the same role of coequal causality with regard to compensatory damages. Both types of damages are "received on account of" the personal injury.

The nub of the matter, it seems to me, is this: If one were to be asked, by a lawyer from another legal system, "What damages can be received on account of personal injuries in the United States?" surely the correct answer would be "Compensatory damages and punitive damages—the former to compensate for the inflicting of the personal injuries, and the latter to punish for the inflicting of them." If, as the Court asserts, the phrase "damages received on account of personal injuries" *can* be used to refer only to the former category, that is only because people sometimes *can* be imprecise. The notion that Congress carefully and precisely used the phrase "damages received on account of personal injuries" to segregate out *compensatory* damages seems to me entirely fanciful. That is neither the exact nor the ordinary meaning of the phrase, and hence not the one that the statute should be understood to intend.

What I think to be the fair meaning of the phrase in isolation becomes even clearer when the phrase is considered in its statutory context. The Court proceeds too quickly from its erroneous premise of ambiguity to analysis of the history and policy behind § 104(a)(2). *Ante,* at 84–87. Ambiguity in isolation, even if it existed, would not end the textual inquiry. Statutory construction, we have said, is a "holistic endeavor." *United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.,* 484 U. S. 365, 371 (1988). "A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme." *Ibid.*

Section 104(a)(2) appears immediately after another provision, § 104(a)(1), which parallels § 104(a)(2) in several respects but does not use the critical phrase "on account of":

> "(a) [G]ross income does not include—
>
> "(1) amounts received under workmen's compensation acts *as compensation for* personal injuries or sickness;
>
> "(2) the amount of any damages received . . . *on account of* personal injuries or sickness." (Emphasis added.)

Although § 104(a)(1) excludes amounts received "as compensation for" personal injuries or sickness, while § 104(a)(2) excludes amounts received "on account of" personal injuries or sickness, the Court reads the two phrases to mean precisely the same thing. That is not sound textual interpretation. "[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended." 2A N. Singer, Sutherland on Statutory Construction § 46.07 (5th ed. 1992 and Supp. 1996). See, *e. g., Russello* v. *United States,* 464 U. S. 16, 23 (1983). This principle of construction has its limits, of course: Use of different terminology in differing contexts might have little significance. But here the contrasting phrases appear in adjoining provisions that address precisely the same subject matter and that even have identical grammatical structure.

The contrast between the two usages is even more striking in the original statute that enacted them. The Revenue Act of 1918 combined subsections (a)(1) and (a)(2) of § 104, together with (a)(3) (which provides an exclusion from income for amounts received through accident or health insurance for personal injuries or sickness), into a single subsection, which provided:

> "'Gross income' . . . [d]oes not include . . . :
>
> "(6) Amounts received, through accident or health insurance or under workmen's compensation acts, *as compensation for* personal injuries or sickness, plus the amount of any damages received . . . *on account of* such injuries or sickness." § 213(b)(6) of the Revenue Act of 1918, 40 Stat. 1065–1066 (emphasis added).

The contrast between the first exclusion and the second could not be more clear. Had Congress intended the latter provision to cover only damages received "as compensation for" personal injuries or sickness, it could have written "amounts received, through accident or health insurance, under workmen's compensation acts, or in damages, as compensation for personal injuries or sickness." Instead, it tacked on an additional phrase "plus the amount of[, etc.]"

with no apparent purpose except to make clear that not *only* compensatory damages were covered by the exclusion.

The Court maintains, however, that the Government's reading of § 104(a)(2) is "more faithful to [its] history." *Ante*, at 84. The "history" to which the Court refers is not statutory history of the sort just discussed—prior enactments approved by earlier Congresses and revised or amended by later ones to produce the current text. Indeed, it is not "history" from within even a small portion of Congress, since the House Committee Report the Court cites, standing by itself, is uninformative, saying only that "[u]nder the present law it is doubtful whether . . . damages received on account of [personal] injuries or sickness are required to be included in gross income." H. R. Rep. No. 767, 65th Cong., 2d Sess., 9–10 (1918). The Court makes this snippet of legislative history relevant by citing as pertinent an antecedent Treasury Department decision, which concludes on the basis of recent judicial decisions that amounts received from prosecution or compromise of a personal-injury suit are not taxable *because they are a return of capital. Ante*, at 85 (citing T. D. 2747, 20 Treas. Dec. Int. Rev. 457 (1918)).

One might expect the Court to conclude from this that the Members of Congress (on the unrealistic assumption that they knew about the Executive Branch opinion) meant the statutory language to cover only return of capital, the source of the "doubt" to which the Committee Report referred. But of course the Court cannot draw that logical conclusion, since even if it is applied only to compensatory damages the statute obviously and undeniably covers *more* than mere return of "human capital," namely, reimbursement for lost income, which would be a large proportion (indeed perhaps the majority) of any damages award. The Court concedes this is so, but asserts that this inconsistency is not enough "to support cutting the statute totally free from its original moorings," *ante*, at 86, by which I assume it means the Treasury Decision, however erroneous it might have been as to the "capital" nature of compensatory damages. But the Treasury Decision was no more explicitly limited to compensatory damages than is the statute before us. It exempted from taxation "an amount received by an individual as the result of a suit or compromise for personal injuries." T. D. 2747, *supra,* at 457. The Court's entire thesis of taxability rests upon the proposition that this Treasury Decision, which overlooked the obvious fact that "an amount received . . . as the result of a suit or compromise for personal injuries" almost always includes compensation for lost future income, did *not* overlook the obvious fact that such an amount sometimes includes "smart money."

So, to trace the Court's reasoning: The statute must exclude punitive damages because the Committee Report must have had in mind a 1918 Treasury Decision, whose text no more supports exclusion of punitive damages than does the text of the statute itself, but which must have *meant* to exclude punitive damages since it was based on the "return-of-capital" theory, though, inconsistently with that theory, it did *not* exclude the much more common category of compensation for lost income. Congress supposedly knew all of this, and a reasonably diligent lawyer could figure it out by mistrusting the inclusive language of the statute, consulting the Committee Report, surmising that the Treasury Decision of 1918 underlay that Report, mistrusting the inclusive language of the Treasury Decision, and discerning that Treasury *could* have overlooked lost-income compensatories, but could *not* have overlooked punitives. I think not. The sure and proper guide, it seems to me, is the language of the statute, inclusive by nature and doubly inclusive by contrast with surrounding provisions.

The Court poses the question, *ante,* at 86, "*why* Congress might have wanted the exclusion [in § 104(a)(2)] to have covered . . . punitive damages." If an answer is needed (and the text being as clear as it is, I think it is not), surely it suffices to surmise that Congress was following the Treasury

Decision, which had inadvertently embraced punitive damages just as it had inadvertently embraced future-income compensatory damages. Or if some reason free of human error must be found, I see nothing wrong with what the Court itself suggests but rejects out of hand: Excluding punitive as well as compensatory damages from gross income "avoids such administrative problems as separating punitive from compensatory portions of a global settlement." *Ante,* at 88. How substantial that particular problem is is suggested by the statistics which show that 73 percent of tort cases in state court are disposed of by settlement, and between 92 and 99 percent of tort cases in federal court are disposed of by either settlement or some other means (such as summary judgment) prior to trial. See B. Ostrom & N. Kauder, Examining the Work of State Courts, 1994, p. 34 (1996); Administrative Office of the United States Courts, L. Mecham, Judicial Business of the United States Courts: 1995 Report of the Director 162–164. What is at issue, of course, is not just imposing on the parties the necessity of allocating the settlement between compensatory and punitive damages (with the concomitant suggestion of intentional wrongdoing that *any* allocation to punitive damages entails), but also imposing on the Internal Revenue Service the necessity of reviewing that allocation, since there would always be strong incentive to inflate the tax-free compensatory portion. The Court's only response to the suggestion that this is an adequate reason (if one is required) for including punitive damages in the exemption is that "[t]he administrative problem of distinguishing punitive from compensatory elements is likely to be less serious than, say, distinguishing among the compensatory elements of a settlement." *Ante,* at 88. Perhaps so; and it may also be more simple than splitting the atom; but that in no way refutes the point that it is complicated *enough* to explain the inclusion of punitive damages in an exemption that has already abandoned the purity of a "return-of-capital" rationale.

The remaining argument offered by the Court is that our decision in *Commissioner* v. *Schleier,* 515 U. S. 323 (1995), came "close to resolving"—in the Government's favor—the question whether § 104(a)(2) permits the exclusion of punitive damages. *Ante,* at 83. I disagree. In *Schleier* we were faced with the question whether backpay and liquidated damages under the Age Discrimination in Employment Act of 1967 (ADEA) were "damages received . . . on account of personal injuries or sickness" for purposes of § 104(a)(2)'s exclusion. As the dissent accurately observed, 515 U. S., at 342 (opinion of O'CONNOR, J.), "the key to the Court's analysis" was the determination that an ADEA cause of action did not necessarily entail "personal injury or sickness," so that the damages awarded for that cause of action could hardly be awarded "on account of personal injuries or sickness." See *id.,* at 330. In the case at hand, we said, "respondent's unlawful termination may have caused some psychological or 'personal' injury comparable to the intangible pain and suffering caused by an automobile accident," but "it is clear that no part of respondent's recovery of back wages is attributable to that injury." *Ibid.* The respondent countered that at least "the liquidated damages portion of his settlement" could be linked to that psychological injury. *Id.,* at 331. And it was in response to *that* argument that we made the statement which the Court seeks to press into service for today's opinion. ADEA liquidated damages, we said, were punitive in nature, rather than compensatory. *Id.,* at 331–332, and n. 5.

The Court recites this statement as though the point of it was that punitive damages could not be received "on account of" personal injuries, whereas in fact the point was quite different: Since the damages were punishment for the conduct that gave rise to the (non-personal-injury) cause of action, they could not be "linked to" the incidental psychological injury. In the present cases, of course, there is no question that a personal injury occurred and that this personal injury is what entitled petitioners to compensatory and punitive damages. We neither decided nor intimated in *Schleier* whether punitive damages that are indisputably "linked to" personal injuries or sickness are received "on account of" such injuries or sickness. Indeed, it would have been odd for us to resolve that question (or even come "close to resolving" it) without any discussion of the numerous considerations of text, history, and policy highlighted by today's opinion. If one were to search our opinions for a dictum bearing upon the present issue, much closer is the statement in *United States* v. *Burke*, 504 U. S. 229 (1992), that a statute confers "tort or tort type rights" (qualifying a plaintiff's recovery for the § 104(a)(2) exemption) if it entitles the plaintiff to "a jury trial at which 'both equitable and legal relief, including compensatory and, under certain circumstances, punitive damages' may be awarded." *Id.*, at 240 (quoting *Johnson* v. *Railway Express Agency, Inc.*, 421 U. S. 454, 460 (1975)).

But all of this is really by the way. Because the statutory text unambiguously covers punitive damages that are awarded on account of personal injuries, I conclude that petitioners were entitled to deduct the amounts at issue here. This makes it unnecessary for me to reach the question, discussed *ante*, at 90–92, whether the Government's refund action against the O'Gilvie children was commenced within the 2-year period specified by 26 U. S. C. § 6532(b). I note, however, that the Court's resolution of these cases also does not demand that this issue be addressed, except to the extent of rejecting the proposition that the statutory period begins to run with the mailing of a refund check. So long as that is not the trigger, there is no need to decide whether the proper trigger is receipt of the check or some later event, such as the check's clearance.

For the reasons stated, I respectfully dissent from the judgment of the Court.

M. L. B. *v.* S. L. J., INDIVIDUALLY AND AS NEXT FRIEND OF THE MINOR CHILDREN, S. L. J. AND M. L. J., ET UX.

CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

No. 95–853. Argued October 7, 1996—Decided December 16, 1996

In a decree forever terminating petitioner M. L. B.'s parental rights to her two minor children, a Mississippi Chancery Court recited a segment of the governing Mississippi statute and stated, without elaboration, that respondents, the children's natural father and his second wife, had met their burden of proof by "clear and convincing evidence." The Chancery Court, however, neither described the evidence nor otherwise revealed precisely why M. L. B. was decreed a stranger to her children. M. L. B. filed a timely appeal from the termination decree, but Mississippi law conditioned her right to appeal on prepayment of record preparation fees estimated at $2,352.36. Lacking funds to pay the fees, M. L. B. sought leave to appeal *in forma pauperis.* The Supreme Court of Mississippi denied her application on the ground that, under its precedent, there is no right to proceed *in forma pauperis* in civil appeals. Urging that the size of her pocketbook should not be dispositive when "an interest far more precious than any property right" is at stake, *Santosky* v. *Kramer,* 455 U. S. 745, 758–759, M. L. B. contends in this Court that a State may not, consistent with the Due Process and Equal Protection Clauses of the Fourteenth Amendment, condition appeals from trial court decrees terminating parental rights on the affected parent's ability to pay record preparation fees.

Held: Just as a State may not block an indigent petty offender's access to an appeal afforded others, see *Mayer* v. *Chicago,* 404 U. S. 189, 195–196, so Mississippi may not deny M. L. B., because of her poverty, appellate review of the sufficiency of the evidence on which the trial court based its parental termination decree. Pp. 110–128.

(a) The foundation case in the relevant line of decisions is *Griffin* v. *Illinois,* 351 U. S. 12, in which the Court struck down an Illinois rule that effectively conditioned thoroughgoing appeals from criminal convictions on the defendant's procurement of a transcript of trial proceedings. The Illinois rule challenged in *Griffin* deprived most defendants lacking the means to pay for a transcript of any access to appellate review. Although the Federal Constitution guarantees no right to appellate review, *id.,* at 18 (plurality opinion), once a State affords that right, *Griffin* held, the State may not "bolt the door to equal justice," *id.,* at 24 (Frankfurter, J., concurring in judgment). The *Griffin* plurality drew support for its decision from the Due Process and Equal Protection Clauses, *id.*, at 13, 18, while Justice Frankfurter emphasized and explained the decision's equal protection underpinning, *id.*, at 23. Of prime relevance to the question presented by M. L. B., *Griffin*'s principle has not been confined to cases in which imprisonment is at stake, but extends to appeals from convictions of petty offenses, involving conduct "quasi criminal" in nature. *Mayer*, 404 U. S., at 196, 197. In contrast, an indigent defendant's right to counsel at state expense does not extend to nonfelony trials if no term of imprisonment is actually imposed. *Scott* v. *Illinois*, 440 U. S. 367, 373–374. Pp. 110–113.

(b) This Court has also recognized a narrow category of civil cases in which the State must provide access to its judicial processes without regard to a party's ability to pay court fees. See, *e. g.*, *Boddie* v. *Connecticut*, 401 U. S. 371, 374 (divorce proceedings). Making clear, however, that a constitutional requirement to waive court fees in civil cases is the exception, not the general rule, the Court has refused to extend *Griffin* to the broad array of civil cases. See *United States* v. *Kras*, 409 U. S. 434, 445; *Ortwein* v. *Schwab*, 410 U. S. 656, 661 *(per curiam)*. But the Court has consistently set apart from the mine run of civil cases those involving state controls or intrusions on family relationships. In that domain, to guard against undue official intrusion, the Court has examined closely and contextually the importance of the governmental interest advanced in defense of the intrusion. Pp. 113–116.

(c) M. L. B.'s case, involving the State's authority to sever permanently a parent-child bond, demands the close consideration the Court has long required when a family association "of basic importance in our society" is at stake. *Boddie*, 401 U. S., at 376. The Court approaches M. L. B.'s petition mindful of the gravity of the sanction imposed on her and in light of two prior decisions most immediately in point: *Lassiter* v. *Department of Social Servs. of Durham Cty.*, 452 U. S. 18 (appointment of counsel for indigent defendants in parental status termination proceedings is not routinely required by the Constitution, but should be determined on a case-by-case basis), and *Santosky* v. *Kramer*, 455 U. S. 745 ("clear and convincing" proof standard is constitutionally required in parental termination proceedings). Although both *Lassiter* and *Santosky* yielded divided opinions, the Court was unanimously of the view that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment," *Santosky*, 455 U. S., at 774 (REHNQUIST, J., dissenting), and that "[f]ew consequences of judicial action are so grave as the severance of natural family ties," *id.*, at 787. Pp. 116–119.

(d) Guided by *Lassiter, Santosky,* and other decisions acknowledging the primacy of the parent-child relationship, the Court agrees with M. L. B. that *Mayer* points to the disposition proper in this case: Her parental termination appeal must be treated as the Court has treated petty offense appeals, and Mississippi may not withhold the transcript she needs to gain review of the order ending her parental status. The Court's decisions concerning access to judicial processes, commencing with *Griffin* and running through *Mayer,* reflect both equal protection and due process concerns. See *Ross* v. *Moffitt,* 417 U. S. 600, 608–609. In these cases, "[d]ue process and equal protection principles converge." *Bearden* v. *Georgia,* 461 U. S. 660, 665. A "precise rationale" has not been composed, *Ross,* 417 U. S., at 608, because cases of this order "cannot be resolved by resort to easy slogans or pigeonhole analysis," *Bearden,* 461 U. S., at 666. Nevertheless, "[m]ost decisions in this area," the Court has recognized, "res[t] on an equal protection framework," *id.,* at 665, as M. L. B.'s plea heavily does, for due process does not independently require that the State provide a right to appeal. Placing this case within the framework established by the Court's past decisions in this area, the Court inspects the character and intensity of the individual interest at stake, on the one hand, and the State's justification for its exaction, on the other. See *id.,* at 666–667.

As in the case of the indigent petty offender charged in *Mayer,* the stakes for M. L. B. are large. Parental status termination is "irretrievabl[y] destructi[ve]" of the most fundamental family relationship. *Santosky,* 455 U. S., at 753. And the risk of error, Mississippi's experience shows, is considerable. Mississippi has, consistent with *Santosky,* adopted a "clear and convincing proof" standard for parental status termination cases, but the Chancellor's order in this case simply recites statutory language; it describes no evidence, and otherwise details no reasons for finding M. L. B. "clear[ly] and convincing[ly]" unfit to be a parent. Only a transcript can reveal the sufficiency, or insufficiency, of the evidence to support that stern judgment. Mississippi's countervailing interest in offsetting the costs of its court system is unimpressive when measured against the stakes for M. L. B. The record discloses that, in the tightly circumscribed category of parental status termination cases, appeals are few, and not likely to impose an undue burden on the State. Moreover, it would be anomalous to recognize a right to a transcript needed to appeal a misdemeanor conviction—though trial counsel may be flatly denied such a defendant—but hold, at the same time, that a transcript need not be prepared for M. L. B.—though were her defense sufficiently complex, state-paid counsel, as *Lassiter* instructs, would be designated for her. While the Court does not question the general rule, stated in *Ortwein,* 410 U. S., at 660, that fee requirements ordinarily are examined only for rationality, the Court's cases solidly establish two exceptions to that rule. The basic right to participate in political processes as voters and candidates cannot be limited to those who can pay for a license. See, *e. g., Harper* v. *Virginia Bd. of Elections,* 383 U. S. 663. Nor may access to judicial processes in cases criminal or "quasi criminal" in nature, *Mayer,* 404 U. S., at 196, turn on ability to pay. The Court places decrees forever terminating parental rights in the category of cases in which the State may not "bolt the door to equal justice." *Griffin,* 351 U. S., at 24 (Frankfurter, J., concurring in judgment). Pp. 119–124.

(e) Contrary to respondents' contention, cases in which the Court has held that government need not provide funds so that people can exercise even fundamental rights, see, *e. g., Lyng* v. *Automobile Workers,* 485 U. S. 360, 363, n. 2, 370–374, are inapposite here. Complainants in those cases sought state aid to subsidize their privately initiated action or to alleviate the consequences of differences in economic circumstances that existed apart from state action. M. L. B.'s complaint is of a different order. She is endeavoring to defend against the State's destruction of her family bonds, and to resist the brand associated with a parental unfitness adjudication. Like a defendant resisting criminal conviction, she seeks to be spared from the State's devastatingly adverse action. That is the very reason this Court has paired her case with *Mayer,* not with *Ortwein* or *Kras.* Also rejected is respondents' suggestion that *Washington* v. *Davis,* 426 U. S. 229, 242, effectively overruled the *Griffin* line of cases in 1976 by rejecting the notion "that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another." That this Court has not so conceived the meaning and effect of *Washington* v. *Davis* is demonstrated by *Bearden,* 461 U. S., at 664–665, in which the Court adhered in 1983 to "*Griffin*'s principle of 'equal justice.'" The Court recognized in *Griffin* that "a law nondiscriminatory on its face may be grossly discriminatory in operation," 351 U. S., at 17, n. 11, and explained in *Williams* v. *Illinois,* 399 U. S. 235, 242, that an Illinois statute it found unconstitutional in that case "in operative effect expose[d] only indigents to the risk of imprisonment beyond the statutory maximum." Like the sanction in *Williams,* the Mississippi prescription here at issue is not merely disproportionate in impact, but wholly contingent on one's ability to pay, thereby "visit[ing] different consequences on two categories of persons." *Ibid.* A failure rigidly to restrict *Griffin* to cases typed "criminal" will not result in the opening of judicial floodgates, as respondents urge. This Court has repeatedly distinguished parental status termination decrees from mine run civil actions on the basis of the unique deprivation termination decrees work: permanent destruction of all legal recognition of the parental relationship. *Lassiter* and *Santosky* have not served as precedent in other areas, and the Court is satisfied that the label "civil" should not entice it to leave undisturbed the Mississippi courts' disposition of this case. Cf. *In re Gault,* 387 U. S. 1, 50. Pp. 124–128.

(f) Thus, Mississippi may not withhold from M. L. B. "a 'record of sufficient completeness' to permit proper [appellate] consideration of [her] claims." *Mayer,* 404 U. S., at 198. P. 128.

Reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, SOUTER, and BREYER, JJ., joined. KENNEDY, J., filed an opinion concurring in the judgment, *post,* p. 128. REHNQUIST, C. J., filed a dissenting opinion, *post,* p. 129. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined, and in which REHNQUIST, C. J., joined, except as to Part II, *post,* p. 129.

Robert B. McDuff argued the cause for petitioner. With him on the briefs were *Danny Lampley* and *Steven R. Shapiro.*

Rickey T. Moore, Special Assistant Attorney General of Mississippi, argued the cause for respondents. With him on the brief was *Mike Moore,* Attorney General.*

JUSTICE GINSBURG delivered the opinion of the Court.

By order of a Mississippi Chancery Court, petitioner M. L. B.'s parental rights to her two minor children were forever terminated. M. L. B. sought to appeal from the termination decree, but Mississippi required that she pay in advance record preparation fees estimated at $2,352.36. Because M. L. B. lacked funds to pay the fees, her appeal was dismissed.

Urging that the size of her pocketbook should not be dispositive when "an interest far more precious than any property right" is at stake, *Santosky* v. *Kramer,* 455 U. S. 745,

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**Martha Matthews* filed a brief for the National Center for Youth Law et al. as *amici curiae.*

758–759 (1982), M. L. B. tenders this question, which we agreed to hear and decide: May a State, consistent with the Due Process and Equal Protection Clauses of the Fourteenth Amendment, condition appeals from trial court decrees terminating parental rights on the affected parent's ability to pay record preparation fees? We hold that, just as a State may not block an indigent petty offender's access to an appeal afforded others, see *Mayer* v. *Chicago*, 404 U. S. 189, 195–196 (1971), so Mississippi may not deny M. L. B., because of her poverty, appellate review of the sufficiency of the evidence on which the trial court found her unfit to remain a parent.

I

Petitioner M. L. B. and respondent S. L. J. are, respectively, the biological mother and father of two children, a boy born in April 1985, and a girl born in February 1987. In June 1992, after a marriage that endured nearly eight years, M. L. B. and S. L. J. were divorced. The children remained in their father's custody, as M. L. B. and S. L. J. had agreed at the time of the divorce.

S. L. J. married respondent J. P. J. in September 1992. In November of the following year, S. L. J. and J. P. J. filed suit in Chancery Court in Mississippi, seeking to terminate the parental rights of M. L. B. and to gain court approval for adoption of the children by their stepmother, J. P. J. The complaint alleged that M. L. B. had not maintained reasonable visitation and was in arrears on child support payments. M. L. B. counterclaimed, seeking primary custody of both children and contending that S. L. J. had not permitted her reasonable visitation, despite a provision in the divorce decree that he do so.

After taking evidence on August 18, November 2, and December 12, 1994, the Chancellor, in a decree filed December 14, 1994, terminated all parental rights of the natural mother, approved the adoption, and ordered that J. P. J., the adopting parent, be shown as the mother of the children on their birth certificates. Twice reciting a segment of the governing Mississippi statute, Miss. Code Ann. § 93–15–103(3)(e) (1994), the Chancellor declared that there had been a "substantial erosion of the relationship between the natural mother, [M. L. B.], and the minor children," which had been caused "at least in part by [M. L. B.'s] serious neglect, abuse, prolonged and unreasonable absence or unreasonable failure to visit or communicate with her minor children." App. to Pet. for Cert. 9, 10.[1]

The Chancellor stated, without elaboration, that the natural father and his second wife had met their burden of proof by "clear and convincing evidence." *Id.*, at 10. Nothing in the Chancellor's order describes the evidence, however, or otherwise reveals precisely why M. L. B. was decreed, forevermore, a stranger to her children.

In January 1995, M. L. B. filed a timely appeal and paid the $100 filing fee. The Clerk of the Chancery Court, several days later, estimated the costs for preparing and transmitting the record: $1,900 for the transcript (950 pages at $2 per page); $438 for other documents in the record (219 pages at $2 per page); $4.36 for binders; and $10 for mailing. *Id.*, at 15.

Mississippi grants civil litigants a right to appeal, but conditions that right on prepayment of costs. Miss. Code Ann. §§ 11–51–3, 11–51–29 (Supp. 1996). Relevant portions of a transcript must be ordered, and its preparation costs advanced by the appellant, if the appellant "intends to urge on appeal," as M. L. B. did, "that a finding or conclusion is unsupported by the evidence or is contrary to the evidence." Miss. Rule of App. Proc. 10(b)(2) (1995); see also Miss. Code Ann. § 11–51–29 (Supp. 1996).

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[1] Mississippi Code Ann. § 93–15–103(3) (1994) sets forth several grounds for termination of parental rights, including, in subsection (3)(e), "when there is [a] substantial erosion of the relationship between the parent and child which was caused at least in part by the parent's serious neglect, abuse, prolonged and unreasonable absence, unreasonable failure to visit or communicate, or prolonged imprisonment."

M. L. B. notes that, "in repeating the catch-all language of [the statute], the Chancellor said that [she] was guilty of 'serious . . . abuse.'" Reply Brief 6, n. 1. "However," M. L. B. adds, "there was no allegation of abuse in the complaint in this case or at any other stage of the proceedings." *Ibid.*

Unable to pay $2,352.36, M. L. B. sought leave to appeal *in forma pauperis.* The Supreme Court of Mississippi denied her application in August 1995. Under its precedent, the court said, "[t]he right to proceed in forma pauperis in civil cases exists only at the trial level." App. to Pet. for Cert. 3.[2]

M. L. B. had urged in Chancery Court and in the Supreme Court of Mississippi, and now urges in this Court, that

> "where the State's judicial processes are invoked to secure so severe an alteration of a litigant's fundamental rights—the termination of the parental relationship with one's natural child—basic notions of fairness [and] of equal protection under the law, . . . guaranteed by [the Mississippi and Federal Constitutions], require that a person be afforded the right of appellate review though one is unable to pay the costs of such review in advance." *Id.*, at 18.[3]

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[2] In fact, Mississippi, by statute, provides for coverage of transcript fees and other costs for indigents in civil commitment appeals. Miss. Code Ann. § 41–21–83 (Supp. 1996) (record on appeal shall include transcript of commitment hearing); Miss. Code Ann. § 41–21–85 (1972) (all costs of hearing or appeal shall be borne by state board of mental health when patient is indigent).

[3] On the efficacy of appellate review in parental status termination cases, M. L. B. notes that of the eight reported appellate challenges to Mississippi trial court termination orders from 1980 through May 1996, three were reversed by the Mississippi Supreme Court for failure to meet the "clear and convincing" proof standard. Brief for Petitioner 20; see also Reply Brief 6 ("[I]n civil cases generally, the Mississippi Court of Appeals reversed or vacated nearly 39% of the trial court decisions it reviewed in 1995 and the Mississippi Supreme Court reversed or vacated nearly 37%. *Supreme Court of Mississippi, 1995 Annual Report*, pp. 22, 41.").

II

Courts have confronted, in diverse settings, the "age-old problem" of "[p]roviding equal justice for poor and rich, weak and powerful alike." *Griffin* v. *Illinois,* 351 U. S. 12, 16 (1956). Concerning access to appeal in general, and transcripts needed to pursue appeals in particular, *Griffin* is the foundation case.

Griffin involved an Illinois rule that effectively conditioned thoroughgoing appeals from criminal convictions on the defendant's procurement of a transcript of trial proceedings. See *id.*, at 13–14, and nn. 2, 3 (noting, *inter alia,* that "mandatory record," which an indigent defendant could obtain free of charge, did not afford the defendant an opportunity to seek review of trial errors). Indigent defendants, other than those sentenced to death, were not excepted from the rule, so in most cases, defendants without means to pay for a transcript had no access to appellate review at all. Although the Federal Constitution guarantees no right to appellate review, *id.*, at 18, once a State affords that right, *Griffin* held, the State may not "bolt the door to equal justice," *id.*, at 24 (Frankfurter, J., concurring in judgment).

The plurality in *Griffin* recognized "the importance of appellate review to a correct adjudication of guilt or innocence." *Id.*, at 18. "[T]o deny adequate review to the poor," the plurality observed, "means that many of them may lose their life, liberty or property because of unjust convictions which appellate courts would set aside." *Id.*, at 19. Judging the Illinois rule inconsonant with the Fourteenth Amendment, the *Griffin* plurality drew support from the Due Process and Equal Protection Clauses. *Id.*, at 13, 18.

Justice Frankfurter, concurring in the judgment in *Griffin,* emphasized and explained the decision's equal protection underpinning:

> "Of course a State need not equalize economic conditions. . . . But when a State deems it wise and just that

> convictions be susceptible to review by an appellate court, it cannot by force of its exactions draw a line which precludes convicted indigent persons, forsooth erroneously convicted, from securing such a review . . . ." *Id.*, at 23.

See also *Ross* v. *Moffitt*, 417 U. S. 600, 607 (1974) (*Griffin* and succeeding decisions "stand for the proposition that a State cannot arbitrarily cut off appeal rights for indigents while leaving open avenues of appeal for more affluent persons."). Summarizing the *Griffin* line of decisions regarding an indigent defendant's access to appellate review of a conviction,[4] we said in *Rinaldi* v. *Yeager*, 384 U. S. 305, 310 (1966): "This Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts."

Of prime relevance to the question presented by M. L. B.'s petition, *Griffin*'s principle has not been confined to cases in which imprisonment is at stake. The key case is *Mayer* v. *Chicago*, 404 U. S. 189 (1971). *Mayer* involved an indigent defendant convicted on nonfelony charges of violating two city ordinances. Fined $250 for each offense, the defendant petitioned for a transcript to support his appeal. He alleged prosecutorial misconduct and insufficient evidence to convict. The State provided free transcripts for indigent appellants in felony cases only. We declined to limit *Griffin* to cases in which the defendant faced incarceration. "The invidiousness of the discrimination that exists when criminal procedures are made available only to those who can pay," the Court said in *Mayer*, "is not erased by any differences in the sentences that may be imposed." 404 U. S., at 197. Petty offenses could entail serious collateral consequences, the *Mayer* Court noted. *Ibid.* The *Griffin* principle, *Mayer* underscored, "is a flat prohibition," 404 U. S., at 196, against "making access to appellate processes from even [the State's] most inferior courts depend upon the [convicted] defendant's ability to pay," *id.*, at 197. An impecunious party, the Court ruled, whether found guilty of a felony or conduct only "quasi criminal in nature," *id.*, at 196, "cannot be denied a record of sufficient completeness to permit proper [appellate] consideration of his claims," *id.*, at 198 (internal quotation marks omitted).[5]

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[4] See, *e. g.*, *Williams* v. *Oklahoma City*, 395 U. S. 458, 458–459 (1969) *(per curiam)* (transcript needed to perfect appeal must be furnished at state expense to indigent defendant sentenced to 90 days in jail and a $50 fine for drunk driving); *Long* v. *District Court of Iowa, Lee Cty.*, 385 U. S. 192, 192–194 (1966) *(per curiam)* (transcript must be furnished at state expense to enable indigent state habeas corpus petitioner to appeal denial of relief); *Smith* v. *Bennett*, 365 U. S. 708, 708–709 (1961) (filing fee to process state habeas corpus application must be waived for indigent prisoner); *Burns* v. *Ohio*, 360 U. S. 252, 253, 257–258 (1959) (filing fee for motion for leave to appeal from judgment of intermediate appellate court to State Supreme Court must be waived when defendant is indigent).

In contrast to the "flat prohibition" of "bolted doors" that the *Griffin* line of cases securely established, the right to counsel at state expense, as delineated in our decisions, is less encompassing. A State must provide trial counsel for an indigent defendant charged with a felony, *Gideon* v. *Wainwright*, 372 U. S. 335, 339 (1963), but that right does not extend to nonfelony trials if no term of imprisonment is actually imposed, *Scott* v. *Illinois*, 440 U. S. 367, 373–374 (1979). A State's obligation to provide appellate counsel to poor defendants faced with incarceration applies to appeals of right. *Douglas* v. *California*, 372 U. S. 353, 357 (1963). In *Ross* v. *Moffitt*, however, we held that neither the Due Process Clause nor the Equal Protection Clause requires a State to provide counsel at state expense to an indigent prisoner pursuing a discretionary appeal in the state system or petitioning for review in this Court. 417 U. S., at 610, 612, 616–618.

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[5] *Griffin* did not impose an inflexible requirement that a State provide a full trial transcript to an indigent defendant pursuing an appeal. See *Griffin* v. *Illinois*, 351 U. S. 12, 20 (1956) (State need not purchase a stenographer's transcript in every case where an indigent defendant cannot buy it; State "Supreme Court may find other means of affording adequate and effective appellate review to indigent defendants."). In *Draper* v. *Washington*, 372 U. S. 487 (1963), we invalidated a state rule that tied an indigent defendant's ability to obtain a transcript at public expense to the trial judge's finding that the defendant's appeal was not frivolous. *Id.*, at 498–500. We emphasized, however, that the *Griffin* requirement is not rigid. "Alternative methods of reporting trial proceedings," we observed, "are permissible if they place before the appellate court an equivalent report of the events at trial from which the appellant's contentions arise." 372 U. S., at 495. Moreover, we held, an indigent defendant is entitled only to those parts of the trial record that are "germane to consideration of the appeal." *Ibid.;* see also *Mayer* v. *Chicago*, 404 U. S. 189, 194 (1971) ("A record of sufficient completeness does not translate automatically into a complete verbatim transcript." (internal quotation marks omitted)).

III

We have also recognized a narrow category of civil cases in which the State must provide access to its judicial processes without regard to a party's ability to pay court fees. In *Boddie* v. *Connecticut*, 401 U. S. 371 (1971), we held that the State could not deny a divorce to a married couple based on their inability to pay approximately $60 in court costs. Crucial to our decision in *Boddie* was the fundamental interest at stake. "[G]iven the basic position of the marriage relationship in this society's hierarchy of values and the concomitant state monopolization of the means for legally dissolving this relationship," we said, due process "prohibit[s] a State from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages." *Id.*, at 374; see also *Little* v. *Streater*, 452 U. S. 1, 13–17 (1981) (State must pay for blood grouping tests sought by an indigent defendant to enable him to contest a paternity suit).

Soon after *Boddie*, in *Lindsey* v. *Normet*, 405 U. S. 56 (1972), the Court confronted a double-bond requirement imposed by Oregon law only on tenants seeking to appeal adverse decisions in eviction actions. We referred first to precedent recognizing that, "if a full and fair trial on the merits is provided, the Due Process Clause of the Fourteenth Amendment does not require a State to provide appellate review." *Id.*, at 77. We next stated, however, that "[w]hen an appeal is afforded, . . . it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause." *Ibid.* Oregon's double-bond requirement failed equal protection measurement, we concluded, because it raised a substantial barrier to appeal for a particular class of litigants—tenants facing eviction—a barrier "faced by no other civil litigant in Oregon." *Id.*, at 79. The Court pointed out in *Lindsey* that the classification there at issue disadvantaged nonindigent as well as indigent appellants, *ibid.;* the *Lindsey* decision, therefore, does not guide our inquiry here.

The following year, in *United States* v. *Kras*, 409 U. S. 434 (1973), the Court clarified that a constitutional requirement to waive court fees in civil cases is the exception, not the general rule. *Kras* concerned fees, totaling $50, required to secure a discharge in bankruptcy. *Id.*, at 436. The Court recalled in *Kras* that "[o]n many occasions we have recognized the fundamental importance . . . under our Constitution" of "the associational interests that surround the establishment and dissolution of th[e] [marital] relationship." *Id.*, at 444.[6] But bankruptcy discharge entails no "fundamental interest," we said. *Id.*, at 445. Although "obtaining [a] desired new start in life [is] important," that interest, the Court explained, "does not rise to the same constitutional level" as the interest in establishing or dissolving a marriage. *Ibid.*[7] Nor is resort to court the sole path to securing debt forgiveness, we stressed; in contrast, termination of a marriage, we reiterated, requires access to the State's judicial machinery. *Id.*, at 445–446; see *Boddie*, 401 U. S., at 376.

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[6] As examples, the Court listed: *Eisenstadt* v. *Baird*, 405 U. S. 438, 453 (1972) (right to be free from government interference in deciding whether to bear or beget a child is "fundamenta[l]," and may not be burdened based upon marital status); *Loving* v. *Virginia*, 388 U. S. 1, 12 (1967) ("Marriage is [a] 'basic civil righ[t],'" and cannot be denied based on a racial classification. (citations omitted)); *Griswold* v. *Connecticut*, 381 U. S. 479, 485–486 (1965) (marital relationship "is an association that promotes a way of life, . . . a harmony in living, . . . a bilateral loyalty," and the use of contraception within marriage is protected against government intrusion); *Skinner* v. *Oklahoma ex rel. Williamson*, 316 U. S. 535, 541 (1942) (Because the power to sterilize affects "a basic liberty[,] . . . strict scrutiny of

In *Ortwein* v. *Schwab*, 410 U. S. 656 (1973) *(per curiam)*, the Court adhered to the line drawn in *Kras*. The appellants in *Ortwein* sought court review of agency determinations reducing their welfare benefits. Alleging poverty, they challenged, as applied to them, an Oregon statute requiring appellants in civil cases to pay a $25 fee. We summarily affirmed the Oregon Supreme Court's judgment rejecting appellants' challenge. As in *Kras*, the Court saw no " 'fundamental interest . . . gained or lost depending on the availability' of the relief sought by [the complainants]." 410 U. S., at 659 (quoting *Kras*, 409 U. S., at 445). Absent a fundamental interest or classification attracting heightened scrutiny, we said, the applicable equal protection standard

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the classification which a State makes in a sterilization law is essential."); *Meyer* v. *Nebraska*, 262 U. S. 390, 399 (1923) (recognizing liberty interest in raising children). See *Kras*, 409 U. S., at 444.

[7] The Court ranked the prescription in *Kras* with economic and social welfare legislation generally, and cited among examples: *Jefferson* v. *Hackney*, 406 U. S. 535, 546 (1972) (Texas scheme for allocating limited welfare benefits is a rational legislative "effor[t] to tackle the problems of the poor and the needy."); *Richardson* v. *Belcher*, 404 U. S. 78 (1971) (federal statute mandating reductions in Social Security benefits to reflect workers' compensation payments is social welfare regulation that survives rational-basis review); *Dandridge* v. *Williams*, 397 U. S. 471, 483, 487 (1970) (Maryland "maximum grant regulation" limiting family welfare benefits is economic, social welfare regulation that is "rationally based and free from invidious discrimination."); *Flemming* v. *Nestor*, 363 U. S. 603, 606, 611 (1960) (The right to receive benefits under the Social Security Act is not "an accrued property right," but Congress may not take away benefits arbitrarily.). See *Kras*, 409 U. S., at 445–446.

"is that of rational justification," a requirement we found satisfied by Oregon's need for revenue to offset the expenses of its court system. 410 U. S., at 660. We expressly rejected the *Ortwein* appellants' argument that a fee waiver was required for all civil appeals simply because the State chose to permit *in forma pauperis* filings in special classes of civil appeals, including appeals from terminations of parental rights. *Id.*, at 661.

In sum, as *Ortwein* underscored, this Court has not extended *Griffin* to the broad array of civil cases. But tellingly, the Court has consistently set apart from the mine run of cases those involving state controls or intrusions on family relationships. In that domain, to guard against undue official intrusion, the Court has examined closely and contextually the importance of the governmental interest advanced in defense of the intrusion. Cf. *Moore* v. *East Cleveland*, 431 U. S. 494 (1977).

IV

Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as "of basic importance in our society," *Boddie*, 401 U. S., at 376, rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect. See, for example, *Turner* v. *Safley*, 482 U. S. 78 (1987), *Zablocki* v. *Redhail*, 434 U. S. 374 (1978), and *Loving* v. *Virginia*, 388 U. S. 1 (1967) (marriage); *Skinner* v. *Oklahoma ex rel. Williamson*, 316 U. S. 535 (1942) (procreation); *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925), and *Meyer* v. *Nebraska*, 262 U. S. 390 (1923) (raising children). M. L. B.'s case, involving the State's authority to sever permanently a parent-child bond,[8] demands the close consideration the Court has long required when a family association so undeniably important is at stake. We approach M. L. B.'s petition mindful of the gravity of the sanction imposed on her and in light of two prior decisions most immediately in point: *Lassiter* v. *Department of Social Servs. of Durham Cty.*, 452 U. S. 18 (1981), and *Santosky* v. *Kramer*, 455 U. S. 745 (1982).

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[8] Although the termination proceeding in this case was initiated by private parties as a prelude to an adoption petition, rather than by a state agency, the challenged state action remains essentially the same: M. L. B. resists the imposition of an official decree extinguishing, as no power other than the State can, her parent-child relationships.

Lassiter concerned the appointment of counsel for indigent persons seeking to defend against the State's termination of their parental status. The Court held that appointed counsel was not routinely required to assure a fair adjudication; instead, a case-by-case determination of the need for counsel would suffice, an assessment to be made "in the first instance by the trial court, subject . . . to appellate review." 452 U. S., at 32.

For probation-revocation hearings where loss of conditional liberty is at issue, the *Lassiter* Court observed, our precedent is not doctrinaire; due process is provided, we have held, when the decision whether counsel should be appointed is made on a case-by-case basis. See *Gagnon* v. *Scarpelli*, 411 U. S. 778, 790 (1973). In criminal prosecutions that do not lead to the defendant's incarceration, however, our precedent recognizes no right to appointed counsel. See *Scott* v. *Illinois*, 440 U. S., at 373–374. Parental termination cases, the *Lassiter* Court concluded, are most appropriately ranked with probation-revocation hearings: While the Court declined to recognize an automatic right to appointed counsel, it said that an appointment would be due when warranted by the character and difficulty of the case. See *Lassiter*, 452 U. S., at 31–32.[9]

Significant to the disposition of M. L. B.'s case, the *Lassiter* Court considered it "plain . . . that a parent's desire for and right to 'the companionship, care, custody, and management of his or her children' is an important interest," one that "'undeniably warrants deference and, absent a powerful countervailing interest, protection.'" *Id.*, at 27 (quoting *Stanley* v. *Illinois*, 405 U. S. 645, 651 (1972)). The object of the proceeding is "not simply to infringe upon [the parent's] interest," the Court recognized, "but to end it"; thus, a decision against the parent "work[s] a unique kind of deprivation." *Lassiter*, 452 U. S., at 27. For that reason, "[a] parent's interest in the accuracy and justice of the decision . . . is . . . a commanding one." *Ibid.;* see also *id.*, at 39 (Blackmun, J., dissenting) ("A termination of parental rights is both total and irrevocable. Unlike other custody proceedings, it leaves the parent with no right to visit or communicate with the child . . . ." (footnote omitted)).

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[9] The Court noted, among other considerations, that petitions to terminate parental rights may charge criminal activity and that "[p]arents so accused may need legal counsel to guide them in understanding the problems such petitions may create." *Lassiter*, 452 U. S., at 27, n. 3.

Santosky held that a "clear and convincing" proof standard is constitutionally required in parental termination proceedings. 455 U. S., at 769–770.[10] In so ruling, the Court again emphasized that a termination decree is "*final* and irrevocable." *Id.*, at 759 (emphasis in original). "Few forms of state action," the Court said, "are both so severe and so irreversible." *Ibid.*[11] As in *Lassiter*, the Court characterized the parent's interest as "commanding," indeed,

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[10] Earlier, in *Addington* v. *Texas*, 441 U. S. 418, 431–432 (1979), the Court concluded that the Fourteenth Amendment requires a "clear and convincing" standard of proof in civil commitment proceedings.

[11] In *Rivera* v. *Minnich*, 483 U. S. 574 (1987), the Court declined to extend *Santosky* to paternity proceedings. The Court distinguished the State's imposition of the legal obligations attending a biological relationship between parent and child from the State's termination of a fully existing parent-child relationship. See *Rivera*, 483 U. S., at 579–582. In drawing this distinction, the Court found it enlightening that state legislatures had similarly separated the two proceedings: Most jurisdictions applied a "preponderance of the evidence" standard in paternity cases, while 38 jurisdictions, at the time *Santosky* was decided, required a higher standard of proof in proceedings to terminate parental rights. See *Rivera*, 483 U. S., at 578–579 (citing *Santosky*, 455 U. S., at 749–750).

"far more precious than any property right." 455 U. S., at 758–759.

Although both *Lassiter* and *Santosky* yielded divided opinions, the Court was unanimously of the view that "the interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment." 455 U. S., at 774 (REHNQUIST, J., dissenting). It was also the Court's unanimous view that "[f]ew consequences of judicial action are so grave as the severance of natural family ties." *Id.*, at 787.

V

Guided by this Court's precedent on an indigent's access to judicial processes in criminal and civil cases, and on proceedings to terminate parental status, we turn to the classification question this case presents: Does the Fourteenth Amendment require Mississippi to accord M. L. B. access to an appeal—available but for her inability to advance required costs—before she is forever branded unfit for affiliation with her children? Respondents urge us to classify M. L. B.'s case with the generality of civil cases, in which indigent persons have no constitutional right to proceed *in forma pauperis*. See *supra*, at 114–116. M. L. B., on the other hand, maintains that the accusatory state action she is trying to fend off[12] is barely distinguishable from criminal condemnation in view of the magnitude and permanence of the loss she faces. Cf. *In re Gault*, 387 U. S. 1, 50, 55 (1967) (resisting "feeble enticement of the 'civil' label-of-convenience," and holding that Fifth Amendment's safeguard against self-incrimination applies in juvenile proceedings). See also *Santosky*, 455 U. S., at 756, 760 (recognizing stigmatic effect of parental status termination decree: "[I]t entails a judicial determination that [a parent is] unfit to raise [her] own children."). For the purpose at hand, M. L. B.

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[12] See *supra*, at 116, n. 8.

asks us to treat her parental termination appeal as we have treated petty offense appeals; she urges us to adhere to the reasoning in *Mayer* v. *Chicago,* 404 U. S. 189 (1971), see *supra,* at 111–112, and rule that Mississippi may not withhold the transcript M. L. B. needs to gain review of the order ending her parental status. Guided by *Lassiter* and *Santosky,* and other decisions acknowledging the primacy of the parent-child relationship, *e. g., Stanley* v. *Illinois,* 405 U. S., at 651; *Meyer* v. *Nebraska,* 262 U. S., at 399, we agree that the *Mayer* decision points to the disposition proper in this case.

We observe first that the Court's decisions concerning access to judicial processes, commencing with *Griffin* and running through *Mayer,* reflect both equal protection and due process concerns. See *Ross* v. *Moffitt,* 417 U. S., at 608–609. As we said in *Bearden* v. *Georgia,* 461 U. S. 660, 665 (1983), in the Court's *Griffin*-line cases, "[d]ue process and equal protection principles converge." The equal protection concern relates to the legitimacy of fencing out would-be appellants based solely on their inability to pay core costs. See *Griffin,* 351 U. S., at 23 (Frankfurter, J., concurring in judgment) (cited *supra,* at 110–111). The due process concern homes in on the essential fairness of the state-ordered proceedings anterior to adverse state action. See *Ross,* 417 U. S., at 609. A "precise rationale" has not been composed, *id.,* at 608, because cases of this order "cannot be resolved by resort to easy slogans or pigeonhole analysis," *Bearden,* 461 U. S., at 666. Nevertheless, "[m]ost decisions in this area," we have recognized, "res[t] on an equal protection framework," *id.,* at 665, as M. L. B.'s plea heavily does, for, as we earlier observed, see *supra,* at 110, due process does not independently require that the State provide a right to appeal. We place this case within the framework established by our past decisions in this area. In line with those decisions, we inspect the character and intensity of the individual interest at stake, on the one hand, and the State's justification for its exaction, on the other. See *Bearden,* 461 U. S., at 666–667.

We now focus on *Mayer* and the considerations linking that decision to M. L. B.'s case. *Mayer,* described *supra,* at 111–112, applied *Griffin* to a petty offender, fined a total of $500, who sought to appeal from the trial court's judgment. See *Mayer,* 404 U. S., at 190. An "impecunious medical student," *id.*, at 197, the defendant in *Mayer* could not pay for a transcript. We held that the State must afford him a record complete enough to allow fair appellate consideration of his claims. The defendant in *Mayer* faced no term of confinement, but the conviction, we observed, could affect his professional prospects and, possibly, even bar him from the practice of medicine. *Ibid.* The State's pocketbook interest in advance payment for a transcript, we concluded, was unimpressive when measured against the stakes for the defendant. *Ibid.*

Similarly here, the stakes for petitioner M. L. B.—forced dissolution of her parental rights—are large, " 'more substantial than mere loss of money.' " *Santosky,* 455 U. S., at 756 (quoting *Addington* v. *Texas,* 441 U. S. 418, 424 (1979)). In contrast to loss of custody, which does not sever the parent-child bond, parental status termination is "irretrievabl[y] destructi[ve]" of the most fundamental family relationship. *Santosky,* 455 U. S., at 753. And the risk of error, Mississippi's experience shows, is considerable. See *supra,* at 109, n. 3.

Consistent with *Santosky,* Mississippi has, by statute, adopted a "clear and convincing proof" standard for parental status termination cases. Miss. Code Ann. § 93–15–109 (Supp. 1996). Nevertheless, the Chancellor's termination order in this case simply recites statutory language; it describes no evidence, and otherwise details no reasons for finding M. L. B. "clear[ly] and convincing[ly]" unfit to be a parent. See *supra,* at 107–108. Only a transcript can reveal to judicial minds other than the Chancellor's the sufficiency, or insufficiency, of the evidence to support his stern judgment.

The countervailing government interest, as in *Mayer,* is financial. Mississippi urges, as the justification for its appeal cost prepayment requirement, the State's legitimate interest in offsetting the costs of its court system. Brief for Respondents 4, 8, n. 1, 27–30. But in the tightly circumscribed category of parental status termination cases, cf. *supra,* at 118, n. 11, appeals are few, and not likely to impose an undue burden on the State. See Brief for Petitioner 20, 25 (observing that only 16 reported appeals in Mississippi from 1980 until 1996 referred to the State's termination statute, and only 12 of those decisions addressed the merits of the grant or denial of parental rights); cf. Brief for Respondents 28 (of 63,765 civil actions filed in Mississippi Chancery Courts in 1995, 194 involved termination of parental rights; of cases decided on appeal in Mississippi in 1995 (including Court of Appeals and Supreme Court cases), 492 were first appeals of criminal convictions, 67 involved domestic relations, 16 involved child custody). Mississippi's experience with criminal appeals is noteworthy in this regard. In 1995, the Mississippi Court of Appeals disposed of 298 first appeals from criminal convictions, Sup. Ct. of Miss. Ann. Rep. 42 (1995); of those appeals, only seven were appeals from misdemeanor convictions, *ibid.,* notwithstanding our holding in *Mayer* requiring *in forma pauperis* transcript access in petty offense prosecutions.[13]

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[13] Many States provide for *in forma pauperis* appeals, including transcripts, in civil cases generally. See, *e. g.,* Alaska Rule App. Proc. 209(a)(3) (1996); Conn. Rule App. Proc. 4017 (1996); D. C. Code Ann. § 15–712 (1995); Idaho Code § 31–3220(5) (1996); Ill. Comp. Stat., ch. 735, § 5/5–105.5(b) (Supp. 1996); Ky. Rev. Stat. Ann. § 453.190 (Baldwin 1991); La. Code Civ. Proc. Ann., Art. 5185 (West Supp. 1996); Me. Rule Civ. Proc. 91(f) (1996); Minn. Stat. § 563.01, subd. 7 (1994); Mo. Rev. Stat. § 512.150 (1994); Neb. Rev. Stat. § 25–2306 (1995); Nev. Rev. Stat. § 12.015.2 (1995); N. M. Stat. Ann. § 39–3–12 (1991); N. Y. Civ. Prac. Law § 1102(b) (McKinney 1976); Ore. Rev. Stat. § 21.605(3)(a) (1991); Pa. Rule Jud. Admin. 5000.2(h) (1996); Tex. Rule App. Proc. 53(j)(1) (1996); Vt. Rule App. Proc.

In States providing criminal appeals, as we earlier recounted, an indigent's access to appeal, through a transcript of relevant trial proceedings, is secure under our precedent. See *supra,* at 110–112. That equal access right holds for petty offenses as well as for felonies. But counsel at state expense, we have held, is a constitutional requirement, even in the first instance, only when the defendant faces time in confinement. See *supra,* at 113. When deprivation of parental status is at stake, however, counsel is sometimes part of the process that is due. See *Lassiter,* 452 U. S., at 31–32. It would be anomalous to recognize a right to a transcript needed to appeal a misdemeanor conviction—though trial counsel may be flatly denied—but hold, at the same time, that a transcript need not be prepared for M. L. B.—though were her defense sufficiently complex, state-paid counsel, as *Lassiter* instructs, would be designated for her.

In aligning M. L. B.'s case and *Mayer*—parental status termination decrees and criminal convictions that carry no jail time—for appeal access purposes, we do not question the general rule, stated in *Ortwein,* that fee requirements ordinarily are examined only for rationality. See *supra,* at 115–116. The State's need for revenue to offset costs, in the mine run of cases, satisfies the rationality requirement, see *Ortwein,* 410 U. S., at 660; States are not forced by the Constitution to adjust all tolls to account for "disparity in mate-

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10(b)(4) (1996); Wash. Rule App. Proc. 15.4(d) (1996); W. Va. Code § 59–2–1(a) (Supp. 1996); *State ex rel. Girouard* v. *Circuit Court for Jackson County,* 155 Wis. 2d 148, 454 N. W. 2d 792 (1990).

Several States deal discretely with *in forma pauperis* appeals, including transcripts, in parental status termination cases. See, *e. g., In re Appeal in Pima County* v. *Howard,* 112 Ariz. 170, 540 P. 2d 642 (1975); Cal. Family Code Ann. § 7895(c) (West 1994); Colo. Rev. Stat. § 19–3–609 (Supp. 1996); *Nix* v. *Department of Human Resources,* 236 Ga. 794, 225 S. E. 2d 306 (1976); *In re Chambers,* 261 Iowa 31, 152 N. W. 2d 818 (1967); Kan. Stat. Ann. § 38–1593 (1986); *In re Karren,* 280 Minn. 377, 159 N. W. 2d 402 (1968); Mich. Rule P. Ct. 5.974(H)(3) (1996); *In re Dotson,* 72 N. J. 112, 367 A. 2d 1160 (1976); *State ex rel. Heller* v. *Miller,* 61 Ohio St. 2d 6, 399 N. E. 2d 66 (1980); *Ex parte Cauthen,* 291 S. C. 465, 354 S. E. 2d 381 (1987).

rial circumstances." *Griffin,* 351 U. S., at 23 (Frankfurter, J., concurring in judgment).

But our cases solidly establish two exceptions to that general rule. The basic right to participate in political processes as voters and candidates cannot be limited to those who can pay for a license.[14] Nor may access to judicial processes in cases criminal or "quasi criminal in nature," *Mayer,* 404 U. S., at 196 (citation and internal quotation marks omitted), turn on ability to pay. In accord with the substance and sense of our decisions in *Lassiter* and *Santosky,* see *supra,* at 117–120, we place decrees forever terminating parental rights in the category of cases in which the State may not "bolt the door to equal justice," *Griffin,* 351 U. S., at 24 (Frankfurter, J., concurring in judgment); see *supra,* at 110.

VI

In numerous cases, respondents point out, the Court has held that government "need not provide funds so that people can exercise even fundamental rights." Brief for Respondents 12; see, *e. g., Lyng* v. *Automobile Workers,* 485 U. S. 360, 363, n. 2, 370–374 (1988) (rejecting equal protection attack on amendment to Food Stamp Act providing that no household could become eligible for benefits while a household member was on strike); *Regan* v. *Taxation with Representation of Wash.,* 461 U. S. 540, 543–544, 550–551 (1983) (rejecting nonprofit organization's claims of free speech and equal protection rights to receive tax deductible contributions to support its lobbying activity); *Harris* v. *McRae,* 448 U. S. 297, 321–326 (1980) (Medicaid funding need not be provided for women seeking medically necessary abortions). A decision for M. L. B., respondents contend, would dishonor our cases recognizing that the Constitution "generally confer[s] no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual." *DeShaney* v. *Winnebago County Dept. of Social Servs.,* 489 U. S. 189, 196 (1989).

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[14] The pathmarking voting and ballot access decisions are *Harper* v. *Virginia Bd. of Elections,* 383 U. S. 663, 664, 666 (1966) (invalidating, as a denial of equal protection, an annual $1.50 poll tax imposed by Virginia on all residents over 21); *Bullock* v. *Carter,* 405 U. S. 134, 135, 145, 149 (1972) (invalidating Texas scheme under which candidates for local office had to pay fees as high as $8,900 to get on the ballot); *Lubin* v. *Panish,* 415 U. S. 709, 710, 718 (1974) (invalidating California statute requiring payment of a ballot-access fee fixed at a percentage of the salary for the office sought).

Notably, the Court in *Harper* recognized that "a State may exact fees from citizens for many different kinds of licenses." 383 U. S., at 668. For example, the State "can demand from all an equal fee for a driver's license." *Ibid.* But voting cannot hinge on ability to pay, the Court explained, for it is a "'fundamental political right . . . preservative of all rights.'" *Id.,* at 667 (quoting *Yick Wo* v. *Hopkins,* 118 U. S. 356, 370 (1886)). *Bullock* rejected as justifications for excluding impecunious persons, the State's concern about unwieldy ballots and its interest in financing elections. 405 U. S., at 144–149. *Lubin* reaffirmed that a State may not require from an indigent candidate "fees he cannot pay." 415 U. S., at 718.

Complainants in the cases on which respondents rely sought state aid to subsidize their privately initiated action or to alleviate the consequences of differences in economic circumstances that existed apart from state action. M. L. B.'s complaint is of a different order. She is endeavoring to defend against the State's destruction of her family bonds, and to resist the brand associated with a parental unfitness adjudication. Like a defendant resisting criminal conviction, she seeks to be spared from the State's devastatingly adverse action. That is the very reason we have paired her case with *Mayer,* not with *Ortwein* or *Kras,* discussed *supra,* at 114–116.

Respondents also suggest that *Washington* v. *Davis,* 426 U. S. 229 (1976), is instructive because it rejects the notion "that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another," *id.*, at 242. "This must be all the more true," respondents urge, "with respect to an allegedly disparate impact on a class [here, the poor] that, unlike race, is not suspect." Brief for Respondents 31.

Washington v. *Davis*, however, does not have the sweeping effect respondents attribute to it. That case involved a verbal skill test administered to prospective Government employees. "[A] far greater proportion of blacks—four times as many—failed the test than did whites." 426 U. S., at 237. But the successful test takers included members of both races, as did the unsuccessful examinees. Disproportionate impact, standing alone, the Court held, was insufficient to prove unconstitutional racial discrimination. Were it otherwise, a host of laws would be called into question, "a whole range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white." *Id.*, at 248.

To comprehend the difference between the case at hand and cases controlled by *Washington* v. *Davis*,[15] one need look no further than this Court's opinion in *Williams* v. *Illinois*, 399 U. S. 235 (1970). *Williams* held unconstitutional an Illinois law under which an indigent offender could be continued in confinement beyond the maximum prison term specified by statute if his indigency prevented him from satisfying the monetary portion of the sentence. The Court described that law as "'nondiscriminatory on its face,'" and recalled that the law found incompatible with the Constitution in *Griffin* had been so characterized. 399 U. S., at 242 (quoting *Griffin*, 351 U. S., at 17, n. 11); see *Griffin*, 351 U. S., at 17, n. 11

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[15] See *Personnel Administrator of Mass.* v. *Feeney*, 442 U. S. 256 (1979); *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U. S. 252 (1977).

("[A] law nondiscriminatory on its face may be grossly discriminatory in its operation."). But the *Williams* Court went on to explain that "the Illinois statute in operative effect exposes *only indigents* to the risk of imprisonment beyond the statutory maximum." 399 U. S., at 242 (emphasis added). Sanctions of the *Williams* genre, like the Mississippi prescription here at issue, are not merely *disproportionate* in impact. Rather, they are wholly contingent on one's ability to pay, and thus "visi[t] different consequences on two categories of persons," *ibid.;* they apply to all indigents and do not reach anyone outside that class.

In sum, under respondents' reading of *Washington* v. *Davis,* our overruling of the *Griffin* line of cases would be two decades overdue. It suffices to point out that this Court has not so conceived the meaning and effect of our 1976 "disproportionate impact" precedent. See *Bearden* v. *Georgia,* 461 U. S., at 664–665 (adhering in 1983 to "*Griffin*'s principle of 'equal justice' ").[16]

Respondents and the dissenters urge that we will open floodgates if we do not rigidly restrict *Griffin* to cases typed "criminal." See *post,* at 141–144 (THOMAS, J., dissenting); Brief for Respondents 27–28. But we have repeatedly noticed what sets parental status termination decrees apart from mine run civil actions, even from other domestic relations matters such as divorce, paternity, and child custody. See *supra,* at 117–120, and n. 11. To recapitulate, termination decrees "wor[k] a unique kind of deprivation." *Lassiter,* 452 U. S., at 27. In contrast to matters modifiable at the parties' will or based on changed circumstances, termination adjudications involve the awesome authority of the State "to destroy permanently all legal recognition of the parental relationship." *Rivera,* 483 U. S., at 580. Our *Lassiter* and *Santosky* decisions, recognizing that parental termination decrees are among the most severe forms of state action, *Santosky,* 455 U. S., at 759, have not served as precedent in other areas. See *supra,* at 118, n. 11. We are therefore satisfied that the label "civil" should not entice us to leave undisturbed the Mississippi courts' disposition of this case. Cf. *In re Gault,* 387 U. S., at 50.

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[16] Six of the seven Justices in the majority in *Washington* v. *Davis,* 426 U. S. 229 (1976), had two Terms before *Davis* read our decisions in *Griffin* and related cases to hold that "[t]he State cannot adopt procedures which leave an indigent defendant 'entirely cut off from any appeal at all,' by virtue of his indigency, or extend to such indigent defendants merely a 'meaningless ritual' while others in better economic circumstances have a 'meaningful appeal.'" *Ross* v. *Moffitt,* 417 U. S. 600, 612 (1974) (opinion of the Court by REHNQUIST, J.) (citations omitted).

* * *

For the reasons stated, we hold that Mississippi may not withhold from M. L. B. "a 'record of sufficient completeness' to permit proper [appellate] consideration of [her] claims." *Mayer,* 404 U. S., at 198. Accordingly, we reverse the judgment of the Supreme Court of Mississippi and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE KENNEDY, concurring in the judgment.

The Court gives a most careful and comprehensive recitation of the precedents from *Griffin* v. *Illinois,* 351 U. S. 12 (1956), through *Mayer* v. *Chicago,* 404 U. S. 189 (1971), and beyond, a line of decisions which invokes both equal protection and due process principles. The duality, as the Court notes, stems from *Griffin* itself, which produced no opinion for the Court and invoked strands of both constitutional doctrines.

In my view the cases most on point, and the ones which persuade me we must reverse the judgment now reviewed, are the decisions addressing procedures involving the rights and privileges inherent in family and personal relations.

These are *Boddie* v. *Connecticut*, 401 U. S. 371 (1971); *Lassiter* v. *Department of Social Servs. of Durham Cty.*, 452 U. S. 18 (1981); and *Santosky* v. *Kramer*, 455 U. S. 745 (1982), all cases resting exclusively upon the Due Process Clause. Here, due process is quite a sufficient basis for our holding.

I acknowledge the authorities do not hold that an appeal is required, even in a criminal case; but given the existing appellate structure in Mississippi, the realities of the litigation process, and the fundamental interests at stake in this particular proceeding, the State may not erect a bar in the form of transcript and filing costs beyond this petitioner's means. The Court well describes the fundamental interests the petitioner has in ensuring that the order which terminated all her parental ties was based upon a fair assessment of the facts and the law. See *Mathews* v. *Eldridge*, 424 U. S. 319, 335 (1976). With these observations, I concur in the judgment.

CHIEF JUSTICE REHNQUIST, dissenting.

I join all but Part II of JUSTICE THOMAS' dissenting opinion. For the reasons stated in that opinion, I would not extend the *Griffin-Mayer* line of cases to invalidate Mississippi's refusal to pay for petitioner's transcript on appeal in this case.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, and with whom THE CHIEF JUSTICE joins except as to Part II, dissenting.

Today the majority holds that the Fourteenth Amendment requires Mississippi to afford petitioner a free transcript because her civil case involves a "fundamental" right. The majority seeks to limit the reach of its holding to the type of case we confront here, one involving the termination of parental rights. I do not think, however, that the new-found constitutional right to free transcripts in civil appeals can be effectively restricted to this case. The inevitable consequence will be greater demands on the States to provide free assistance to would-be appellants in all manner of civil cases involving interests that cannot, based on the test established by the majority, be distinguished from the admittedly important interest at issue here. The cases on which the majority relies, primarily cases requiring appellate assistance for indigent criminal defendants, were questionable when decided, and have, in my view, been undermined since. Even accepting those cases, however, I am of the view that the majority takes them too far. I therefore dissent.

I

Petitioner requests relief under both the Due Process and Equal Protection Clauses, though she does not specify how either Clause affords it. The majority accedes to petitioner's request. But, carrying forward the ambiguity in the cases on which it relies, the majority does not specify the source of the relief it grants. Those decisions are said to "reflect both equal protection and due process concerns." *Ante*, at 120. And, while we are told that "cases of this order 'cannot be resolved by resort to easy slogans or pigeonhole analysis,'" *ibid.* (quoting *Bearden* v. *Georgia*, 461 U. S. 660, 666 (1983)), the majority nonetheless acknowledges that "'[m]ost decisions in this area . . . res[t] on an equal protection framework,'" *ante*, at 120 (quoting *Bearden*, *supra*, at 665). It then purports to "place this case within the framework established by our past decisions in this area." *Ante*, at 120. It is not clear to me whether the majority disavows *any* due process support for its holding. (Despite the murky disclaimer, the majority discusses numerous cases that squarely relied on due process considerations.) I therefore analyze petitioner's claim under both the Due Process and Equal Protection Clauses. If neither Clause affords petitioner the right to a free, civil-appeal transcript, I assume that no amalgam of the two does.

A

We have indicated on several occasions in this century that the interest of parents in maintaining their relationships with their children is "an important interest that 'undeniably warrants deference and, absent a powerful countervailing interest, protection.'" *Lassiter* v. *Department of Social Servs. of Durham Cty.*, 452 U. S. 18, 27 (1981) (quoting *Stanley* v. *Illinois*, 405 U. S. 645, 651 (1972)). Assuming that petitioner's interest may not be impinged without due process of law, I do not think that the Due Process Clause requires the result the majority reaches.

Petitioner's largest obstacle to a due process appeal *gratis* is our oft-affirmed view that due process does not oblige States to provide for any appeal, even from a criminal conviction. See, *e. g., Griffin* v. *Illinois*, 351 U. S. 12, 18 (1956) (plurality opinion) (noting that "a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all" (citation omitted)); *McKane* v. *Durston*, 153 U. S. 684, 687 (1894) ("A review by an appellate court of the final judgment in a criminal case, however grave the offence of which the accused is convicted, was not at common law and is not now a necessary element of due process of law. It is wholly within the discretion of the State to allow or not to allow such a review. A citation of authorities upon the point is unnecessary"). To be sure, we have indicated, beginning with *Griffin* v. *Illinois*, that where an appeal is provided, States may be prohibited from erecting barriers to those unable to pay. As I described last Term in my concurring opinion in *Lewis* v. *Casey*, 518 U. S. 343, 368–373 (1996), however, I believe that these cases are best understood as grounded in equal protection analysis, and thus make no inroads on our longstanding rule that States that accord due process in a hearing-level tribunal need not provide further review.

The majority reaffirms that due process does not require an appeal. *Ante*, at 110, 120. Indeed, as I noted above, it is not clear that the majority relies on the Due Process Clause at all. The majority does discuss, however, one case in which the Court stated its holding in terms of due process: *Boddie* v. *Connecticut,* 401 U. S. 371 (1971). In *Boddie,* the Court held violative of due process a Connecticut statute that exacted fees averaging $60 from persons seeking marital dissolution. Citing the importance of the interest in ending a marriage, and the State's monopoly over the mechanisms to accomplish it, we explained that, "at a minimum" and "absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." *Id.,* at 377. *Boddie* has little to do with this case. It, "of course, was not concerned with post-hearing review." *Ortwein* v. *Schwab,* 410 U. S. 656, 659 (1973). Rather, the concern in *Boddie* was that indigent persons were deprived of "fundamental rights" with no hearing whatsoever. Petitioner, in contrast, received not merely a hearing, but in fact enjoyed procedural protections above and beyond what our parental termination cases have required. She received both notice and a hearing before a neutral, legally trained decisionmaker. She was represented by counsel—even though due process does not in every case require the appointment of counsel. See *Lassiter, supra,* at 24. Through her attorney, petitioner was able to confront the evidence and witnesses against her. And, in accordance with *Santosky* v. *Kramer,* 455 U. S. 745, 769 (1982), the Chancery Court was required to find that petitioner's parental unfitness was proved by clear and convincing evidence. Indeed, petitioner points to no hearing-level process to which she was entitled that she did not receive.

Given the many procedural protections afforded petitioner, I have little difficulty concluding that "due process has . . . been accorded in the tribunal of first instance." *Ohio ex rel. Bryant* v. *Akron Metropolitan Park Dist.,* 281 U. S. 74, 80

(1930). Due process has never compelled an appeal where, as here, its rigors are satisfied by an adequate hearing. Those cases in which the Court has required States to alleviate financial obstacles to process beyond a hearing—though sometimes couched in due process terms—have been based on the equal protection proposition that if the State chooses to provide for appellate review, it " 'can no more discriminate on account of poverty than on account of religion, race, or color.' " *Lewis* v. *Casey, supra,* at 371 (THOMAS, J., concurring) (quoting *Griffin* v. *Illinois, supra,* at 17 (plurality opinion)) (footnote omitted). There seems, then, no place in the Due Process Clause—certainly as an original matter, and even as construed by this Court—for the constitutional "right" crafted by the majority today. I turn now to the other possible source: The Equal Protection Clause.

B

As I stated last Term in *Lewis* v. *Casey,* I do not think that the equal protection theory underlying the *Griffin* line of cases remains viable. See 518 U. S., at 373–378. There, I expressed serious reservations as to the continuing vitality of *Bounds* v. *Smith,* 430 U. S. 817 (1977) (requiring prison authorities to provide prisoners with adequate law libraries or legal assistance). As it did in *Bounds,* the Court today not only adopts the equal protection theory of *Griffin* v. *Illinois*—which was dubious *ab initio* and which has been undermined since—but extends it. Thus, much of what I said in *Lewis* v. *Casey* bears repeating here.

In *Griffin,* the State of Illinois required all criminal appellants whose claims on appeal required review of a trial transcript to obtain it themselves. The plurality thought that this "discriminate[d] against some convicted defendants on account of their poverty," 351 U. S., at 18 (plurality opinion). Justice Harlan, in dissent, perceived a troubling shift in this Court's equal protection jurisprudence. The Court, he noted, did not "dispute either the necessity for a bill of exceptions or the reasonableness of the general requirement that the trial transcript, if used in its preparation, be paid for by the appealing party." *Id.*, at 35. But, because requiring each would-be appellant to bear the costs of appeal hit the poor harder, the majority divined "an invidious classification between the 'rich' and the 'poor.'" *Ibid.* Disputing this early manifestation of the "disparate impact" theory of equal protection, Justice Harlan argued:

> "[N]o economic burden attendant upon the exercise of a privilege bears equally upon all, and in other circumstances the resulting differentiation is not treated as an invidious classification by the State, even though discrimination against 'indigents' by name would be unconstitutional." *Ibid.*

Justice Harlan offered the example of a state university that conditions an education on the payment of tuition. If charging tuition did not create a discriminatory classification, then, Justice Harlan wondered, how did any other reasonable exaction by a State for a service it provides? "The resulting classification would be invidious in all cases, and an invidious classification offends equal protection regardless of the seriousness of the consequences." *Ibid.* (emphasis deleted). The issue in *Griffin* was not whether Illinois had made a reasonable classification, but whether the State acted reasonably in failing to remove disabilities that existed wholly independently of state action. To Justice Harlan this was not an inquiry typically posed under the Equal Protection Clause.

In *Douglas* v. *California*, 372 U. S. 353 (1963), Justice Harlan again confronted what Justice Clark termed the Court's "fetish for indigency," *id.*, at 359 (dissenting opinion). Regarding a law limiting the appointment of appellate counsel for indigents, Justice Harlan pointed out that "[l]aws such as these do not deny equal protection to the less fortunate for one essential reason: the Equal Protection Clause does not impose on the States 'an affirmative duty to lift the handicaps flowing from differences in economic circumstances.'" *Id.*, at 362 (dissenting opinion) (footnote omitted).

Justice Harlan's views were accepted by the Court in *Washington* v. *Davis*, 426 U. S. 229 (1976), in which "[w]e rejected a disparate impact theory of the Equal Protection Clause altogether." *Lewis* v. *Casey*, *supra*, at 375 (concurring opinion). We spurned the claim that "a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another." 426 U. S., at 242. Absent proof of discriminatory purpose, official action did not violate the Fourteenth Amendment "*solely* because it has a racially disparate impact." *Id.*, at 239 (emphasis in original). Hearkening back to Justice Harlan's dissents in *Griffin* and *Douglas*, we recognized that

> "[a] rule that a statute designed to serve neutral ends is nevertheless invalid, absent compelling justification, if in practice it benefits or burdens one race more than another would be far reaching and would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white." 426 U. S., at 248 (footnote omitted).

The lesson of *Davis* is that the Equal Protection Clause shields only against purposeful discrimination: A disparate impact, even upon members of a racial minority, the classification of which we have been most suspect, does not violate equal protection. The Clause is not a panacea for perceived social or economic inequity; it seeks to "guarante[e] equal laws, not equal results." *Personnel Administrator of Mass.* v. *Feeney*, 442 U. S. 256, 273 (1979).

Since *Davis*, we have regularly required more of an equal protection claimant than a showing that state action has a harsher effect on him or her than on others. See, *e. g., Harris* v. *McRae,* 448 U. S. 297, 324, n. 26 (1980) ("The equal protection component of the Fifth Amendment prohibits only purposeful discrimination, and when a facially neutral federal statute is challenged on equal protection grounds, it is incumbent upon the challenger to prove that Congress selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group" (internal quotation marks and citations omitted)); see also *Lewis* v. *Casey,* 518 U. S., at 375 (concurring opinion) (citing cases). Our frequent pronouncements that the Fourteenth Amendment is not violated by disparate impact have spanned challenges to statutes alleged to affect disproportionately members of one race, *Washington* v. *Davis, supra;* members of one sex, *Personnel Administrator* v. *Feeney, supra;* and poor persons seeking to exercise protected rights, *Harris* v. *McRae, supra; Maher* v. *Roe,* 432 U. S. 464, 470–471 (1977).

The majority attempts to avoid what I regard as the irresistible force of the *Davis* line of cases, but I am unconvinced by the effort. The majority states that persons in cases like those cited above "sought state aid to subsidize their privately initiated action or to alleviate the consequences of differences in economic circumstances that existed apart from state action." *Ante,* at 125. Petitioner, in apparent contrast, "is endeavoring to defend against the State's destruction of her family bonds, and to resist the brand associated with a parental unfitness adjudication." *Ibid.* She, "[l]ike a defendant resisting criminal conviction, . . . seeks to be spared from the State's devastatingly adverse action." *Ibid.* But, also like a defendant resisting criminal conviction, petitioner is not constitutionally entitled to post-trial process. See *ante,* at 110, 120. She defended against the "destruction of her family bonds" in the Chancery Court hearing at which she was accorded all the process this Court has required of the States in parental termination cases. She now desires "state aid to subsidize [her] privately initiated" appeal—an appeal that neither petitioner nor the majority claims Mississippi is required to provide—to overturn the determination that resulted from that hearing. I see no principled difference between a facially neutral rule that serves in some cases to prevent persons from availing themselves of state employment, or a state-funded education, or a state-funded abortion—each of which the State may, but is not required to, provide—and a facially neutral rule that prevents a person from taking an appeal that is available only because the State chooses to provide it.

Nor does *Williams* v. *Illinois,* 399 U. S. 235 (1970), a case decided six years earlier, operate to limit *Washington* v. *Davis.* *Williams* was yet another manifestation of the "equalizing" notion of equal protection that this Court began to question in *Davis.* See *Williams, supra,* at 260 (Harlan, J., concurring in result). To the extent its reasoning survives *Davis,* I think that *Williams* is distinguishable. Petitioner Williams was incarcerated beyond the maximum statutory sentence because he was unable to pay the fine imposed as part of his sentence. We found the law that permitted prisoners to avoid extrastatutory imprisonment only by paying their fines to violate the Equal Protection Clause. Even though it was " 'nondiscriminatory on its face,' " the law "work[ed] an invidious discrimination" as to Williams and all other indigents because they could not afford to pay their fines. 399 U. S., at 242. The majority concludes that the sanctions involved in *Williams* are analogous to "the Mississippi prescription here at issue," in that both do not have merely a disparate impact, "they apply to all indigents and do not reach anyone outside that class." *Ante,* at 127. Even assuming that Williams' imprisonment gave rise to an equal protection violation, however, M. L. B.'s circumstances are not comparable. M. L. B.'s parental rights were terminated—the analog to Williams' extended imprisonment—because the Chancery Court found, after a hearing, that she was unfit to remain her children's mother, not because she was indigent. Her indigency only prevented her from taking advantage of procedures above and beyond those required by the Constitution—in the same way that indigency frequently prevents persons from availing themselves of a variety of state services.[1]

The *Griffin* line of cases ascribed to—one might say announced—an equalizing notion of the Equal Protection Clause that would, I think, have startled the Fourteenth Amendment's Framers. In those cases, the Court did not find, nor did it seek, any purposeful discrimination on the part of the state defendants. That their statutes had disproportionate effect on poor persons was sufficient for us to find a constitutional violation. In *Davis*, among other cases, we began to recognize the potential mischief of a disparate impact theory writ large, and endeavored to contain it. In this case, I would continue that enterprise. Mississippi's requirement of prepaid transcripts in civil appeals seeking to contest the sufficiency of the evidence adduced at trial is facially neutral; it creates no classification. The transcript rule reasonably obliges would-be appellants to bear the costs of availing themselves of a service that the State chooses, but is not constitutionally required, to provide.[2] Any adverse impact that the transcript requirement has on any person seeking to appeal arises not out of the State's action, but out of factors entirely unrelated to it.

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[1] Similarly, *Harper* v. *Virginia Bd. of Elections*, 383 U. S. 663 (1966), struck down a poll tax that directly restricted the exercise of a right found in that case to be fundamental—the right to vote in state elections. The fee that M. L. B. is unable to pay does not prevent the exercise of a fundamental right directly: The fundamental interest identified by the majority is not the right to a civil appeal, it is rather the right to maintain the parental relationship.

[2] Petitioner suggests that Mississippi's $2 per page charge exceeds the actual cost of transcription. See Reply Brief for Petitioner 8. She stops short of asserting that the charge is unreasonable or irrational. While not conclusive, I note that Mississippi's transcript charge falls comfortably within the range of charges throughout the Nation. See, *e. g.*, Ariz. Rev. Stat. Ann. § 12–224(B) (1992) ($2.50/page); Idaho Code § 1–1105(2) (1990) ($2/page); Mass. Gen. Laws § 221:88 (1994) ($3/page); Mo. Rev. Stat. § 485.100 (1994) ($1.50/page); N. M. Stat. Ann. § 34–6–20(C) (1996) ($1.65/page); R. I. Gen. Laws § 8–5–5 (Supp. 1995) (family court transcripts, $3/page); S. C. App. Ct. Rule 508 ($2/page).

II

If this case squarely presented the question, I would be inclined to vote to overrule *Griffin* and its progeny. Even were I convinced that the cases on which the majority today relies ought to be retained, I could not agree with the majority's extension of them.

The interest at stake in this case differs in several important respects from that at issue in cases such as *Griffin.* Petitioner's interest in maintaining a relationship with her children is the subject of a civil, not criminal, action. While certain civil suits may tend at the margin toward criminal cases, and criminal cases may likewise drift toward civil suits, the basic distinction between the two finds root in the Constitution and has largely retained its vitality in our jurisprudence. In dissent in *Boddie* v. *Connecticut,* Justice Black stated that "in *Griffin* the Court studiously and carefully refrained from saying one word or one sentence suggesting that the rule there announced to control rights of criminal defendants would control in the quite different field of civil cases." 401 U. S., at 390. The Constitution provides for a series of protections of the unadorned liberty interest at stake in criminal proceedings. These express protections include the Fifth Amendment's guarantee of grand jury indictment, and protection against double jeopardy and self-incrimination; the Sixth Amendment's guarantees of a speedy and public jury trial, of the ability to confront witnesses, and of compulsory process and assistance of counsel; and the Eighth Amendment's protections against excessive bail and fines, and against cruel and unusual punishment. This Court has given content to these textual protections, and has identified others contained in the Due Process Clause. These protections are not available to the typical civil litigant. Even where the interest in a civil suit has been labeled "fundamental," as with the interest in parental termination suits, the protections extended pale by comparison. A party whose parental rights are subject to termination is entitled to appointed counsel, but only in certain circumstances. See *Lassiter,* 452 U. S., at 31–32. His or her rights cannot be terminated unless the evidence meets a standard higher than the preponderance standard applied in the typical civil suit, but the standard is still lower than that required before a guilty verdict. See *Santosky* v. *Kramer,* 455 U. S., at 769–770.

That said, it is true enough that civil and criminal cases do not always stand in bold relief to one another. *Mayer* v. *Chicago,* 404 U. S. 189 (1971), marks a particularly discomfiting point along the border between the civil and criminal areas. Based on *Griffin,* the Court determined there that an indigent defendant had a constitutional right to a free transcript in aid of appealing his conviction for violating city ordinances, which resulted in a $500 fine and no imprisonment. In *Scott* v. *Illinois,* 440 U. S. 367 (1979), we concluded that an indigent defendant charged with a crime that was not punishable by imprisonment was not entitled to appointed counsel. And yet, in *Lassiter, supra,* we held that, in some cases, due process required provision of assistance of counsel before the termination of parental rights. The assertion that civil litigants have no right to the free transcripts that all criminal defendants enjoy is difficult to sustain in the face of our holding that some civil litigants are entitled to the assistance of counsel to which some criminal defendants are not. It is at this unsettled (and unsettling) place that the majority lays the foundation of its holding. See *ante,* at 120–124. The majority's solution to the "anamol[y]" that a misdemeanant receives a free transcript but no trial counsel, while a parental-rights terminee receives (sometimes) trial counsel, but no transcript, works an extension of *Mayer.* I would answer the conundrum differently: Even if the *Griffin* line were sound, *Mayer* was an unjustified extension that should be limited to its facts, if not overruled.

Unlike in *Scott* and *Lassiter*, the Court gave short shrift in *Mayer* to the distinction, as old as our Constitution, between crimes punishable by imprisonment and crimes punishable merely by fines. See *Lassiter, supra*, at 26–27; *Scott, supra*, at 373. Even though specific text-based constitutional protections have been withheld in cases not involving the prospect of imprisonment, the Court found the difference of no moment in *Mayer*. The Court reasoned that "[t]he invidiousness of the discrimination that exists when criminal procedures are made available only to those who can pay is not erased by any differences in the sentences that may be imposed." 404 U. S., at 197. We reap today what we sowed then. If requiring payment for procedures (*e. g.*, appeals) that are not themselves required is invidious discrimination no matter what sentence results, it is difficult to imagine why it is not invidious discrimination no matter what results and no matter whether the procedures involve a criminal or civil case. See *supra*, at 135. To me this points up the difficulty underlying the entire *Griffin* line. Taking the *Griffin* line as a given, however, and in the absence of any obvious limiting principle, I would restrict it to the criminal appeals to which its authors, see *Boddie* v. *Connecticut*, 401 U. S., at 389 (Black, J., dissenting), sought to limit it.

The distinction between criminal and civil cases—if blurred at the margins—has persisted throughout the law. The distinction that the majority seeks to draw between the case we confront today and the other civil cases that we will surely face tomorrow is far more ephemeral. If all that is required to trigger the right to a free appellate transcript is that the interest at stake appear to us to be as fundamental as the interest of a convicted misdemeanant, several kinds of civil suits involving interests that seem fundamental enough leap to mind. Will the Court, for example, now extend the right to a free transcript to an indigent seeking to appeal the outcome of a paternity suit?[3] To those who wish to appeal custody determinations?[4] How about persons against whom divorce decrees are entered?[5] Civil suits that arise out of challenges to zoning ordinances with an impact on families?[6] Why not foreclosure actions—or at least foreclosure actions seeking to oust persons from their homes of many years?[7]

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[3] In *Little* v. *Streater,* 452 U. S. 1 (1981), we held that the Due Process Clause required the States to provide a free blood grouping test to an indigent defendant in a paternity action. The Court observed that "[a]part from the putative father's pecuniary interest in avoiding a substantial support obligation and liberty interest threatened by the possible sanctions for noncompliance, at issue is the creation of a parent-child relationship. This Court frequently has stressed the importance of familial bonds, whether or not legitimized by marriage, and accorded them constitutional protection. Just as the termination of such bonds demands procedural fairness, so too does their imposition." *Id.,* at 13 (citations omitted). *Little*'s description of the interest at stake in a paternity suit seems to place it on par with the interest here.

Justice Blackmun, dissenting in *Lassiter* v. *Department of Social Servs. of Durham Cty.,* 452 U. S. 18, 58 (1981), recognized as much: "I deem it not a little ironic that the Court on this very day grants, on due process grounds, an indigent putative father's claim for state-paid blood grouping tests in the interest of according him a meaningful opportunity to disprove his paternity, *Little* v. *Streater, [supra,]* but in the present case rejects, on due process grounds, an indigent mother's claim for state-paid legal assistance when the State seeks to take her own child away from her in a termination proceeding." (Emphasis deleted.)

As the majority indicates, *ante,* at 118, n. 11, we have distinguished—in my view unpersuasively—between the requirements of due process in paternity suits and in termination suits. See *Rivera* v. *Minnich,* 483 U. S. 574 (1987). Whether we will distinguish between paternity appellants and misdemeanor appellants remains to be seen.

[4] See, *e. g., Zakrzewski* v. *Fox,* 87 F. 3d 1011, 1013–1014 (CA8 1996) (father's "fundamental" "liberty interest in the care, custody and management of his son has been substantially reduced by the terms of the divorce decree and Nebraska law").

[5] In *Boddie* v. *Connecticut,* 401 U. S. 371 (1971), we referred to a divorce as the "adjustment of a fundamental human relationship." *Id.,* at 382–383.

[6] See, *e. g., Moore* v. *East Cleveland,* 431 U. S. 494 (1977).

The majority seeks to provide assurances that its holding will not extend beyond parental termination suits. The holdings of *Santosky* and *Lassiter*—both of which involved parental termination—have not, we are told, been applied to other areas of law. *Ante,* at 128. This is not comforting. Both *Santosky* and *Lassiter* are cases that determined the requirements of due process (not equal protection) in the parental rights termination area. As the Court has said countless times, the requirements of due process vary considerably with the interest involved and the action to which it is subject. It is little wonder, then, that the specific due process requirements for one sort of action are not readily transferable to others. I have my doubts that today's opinion will be so confined. In the first place, it is not clear whether it is an equal protection or a due process opinion. Moreover, the principle on which it appears to rest hardly seems capable of stemming the tide. Petitioner is permitted a free appellate transcript because the interest that underlies her civil claim compares favorably to the interest of the misdemeanant facing a $500 fine and unknown professional difficulties in *Mayer* v. *Chicago.* Under the rule announced today, I do not see how a civil litigant could constitutionally be denied a free transcript in any case that involves an interest that is arguably as important as the interest in *Mayer* (which would appear to include all the types of cases that I mention above, and perhaps many others).[8] What is more, it must be remembered that *Griffin* did not merely invent the free transcript right for criminal appellants; it was also the launching pad for the discovery of a host of other rights. See, *e. g., Bounds,* 430 U. S., at 822 (right to prison law libraries or legal assistance); *Douglas,* 372 U. S., at 356 (right to free appellate counsel). I fear that the growth of *Griffin* in the criminal area may be mirrored in the civil area.

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[7] Cf. *Lindsey* v. *Normet,* 405 U. S. 56, 89–90 (1972) (Douglas, J., dissenting in part) ("[W]here the right is so fundamental as the tenant's claim to his home, the requirements of due process should be more embracing").

[8] Accordingly, Mississippi will no doubt find little solace in the fact that, as the majority notes, of 63,765 civil actions filed in Mississippi Chancery Court in 1995, 194 were parental termination cases. *Ante,* at 122. Mississippi pointed out in its brief that of these civil actions, "39,475 were domestic relations cases," "1027 involved custody or visitation, and 6080 were paternity cases." Brief for Respondents 28.

In brushing aside the distinction between criminal and civil cases—the distinction that has constrained *Griffin* for 40 years—the Court has eliminated the last meaningful limit on the free-floating right to appellate assistance. From *Mayer,* an unfortunate outlier in the *Griffin* line, has sprung the *M. L. B.* line, and I have no confidence that the majority's assurances that the line starts and ends with this case will hold true.

III

As the majority points out, many States already provide for *in forma pauperis* civil appeals, with some making special allowances for parental termination cases. I do not dispute the wisdom or charity of these heretofore voluntary allocations of the various States' scarce resources. I agree that, for many—if not most—parents, the termination of their right to raise their children would be an exaction more dear than any other. It seems perfectly reasonable for States to choose to provide extraconstitutional procedures to ensure that any such termination is undertaken with care. I do not agree, however, that a State that has taken the step, not required by the Constitution, of permitting appeals from termination decisions somehow violates the Constitution when it charges reasonable fees of all would-be appellants. I respectfully dissent.

GREENE *v.* GEORGIA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

No. 96–5369. Decided December 16, 1996

Petitioner was convicted of murder, armed robbery, and aggravated assault by a Georgia jury and sentenced to death. Over his objection, the trial court excused for cause five jurors who expressed reservations about the death penalty. The State Supreme Court affirmed, citing *Wainwright* v. *Witt,* 469 U. S. 412, as "controlling authority" for a rule that appellate courts must defer to trial courts' juror bias findings.

Held: Witt is not controlling authority as to the standard of review to be applied by state appellate courts reviewing trial courts' jury selection rulings. *Witt* arose on federal habeas, where deference to state-court findings is mandated by 28 U. S. C. § 2254(d), but that statute does not govern the standard of review of trial court findings by the Georgia Supreme Court. That court mistakenly believed itself bound by *Witt's* standard. It is free to adopt that standard, but it need not do so.

Certiorari granted; 266 Ga. 439, 469 S. E. 2d 129, reversed and remanded.

PER CURIAM.

Petitioner was convicted of murder, armed robbery, and aggravated assault by a jury in Taylor County, Georgia, and sentenced to death. At trial, over petitioner's objection, the court excused for cause five jurors who expressed reservations about the death penalty. The Supreme Court of Georgia affirmed, citing *Wainwright* v. *Witt,* 469 U. S. 412 (1985), as "controlling authority" for a rule that appellate courts must defer to trial courts' findings concerning juror bias. 266 Ga. 439, 440–442, 469 S. E. 2d 129, 134–135 (1996).

Wainwright v. *Witt, supra,* delineated the standard under the Sixth and Fourteenth Amendments for determining when a juror may be excused for cause because of his views on the death penalty: whether these views would "'prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath.'" *Id.,* at 424. Addressing petitioner's federal constitutional challenge to the juror disqualifications in this case, the Supreme Court of Georgia correctly recognized that *Witt* is "the controlling authority as to the death-penalty qualification of prospective jurors . . . ." 266 Ga., at 440, 469 S. E. 2d, at 134.*

Witt also held that, under 28 U. S. C. § 2254(d), federal courts must accord a presumption of correctness to state courts' findings of juror bias. 469 U. S., at 426–430. The Supreme Court of Georgia said that *Witt* was also "controlling authority" on this point, and it therefore ruled that "[t]he conclusion that a prospective juror is disqualified for bias is one that is based upon findings of demeanor and credibility which are peculiarly within the trial court's province and such findings are to be given deference by appellate courts. *Wainwright* v. *Witt*, [469 U. S.,] at 428." 266 Ga., at 441, 469 S. E. 2d, at 134–135.

Witt is not "controlling authority" as to the standard of review to be applied by state appellate courts reviewing trial courts' rulings on jury selection. *Witt* was a case arising on federal habeas, where deference to state-court findings is mandated by 28 U. S. C. § 2254(d). But this statute does not govern the standard of review of trial court findings by the Supreme Court of Georgia. There is no indication in that court's opinion that it viewed *Witt* as merely persuasive authority, or that the court intended to borrow or adopt the *Witt* standard of review for its own purposes. It believed itself bound by *Witt*'s standard of review of trial court findings on jury-selection questions, and in so doing it was mistaken.

In a similar case involving a state court's mistaken view that the First Amendment required it to reach a particular result, we said: "We conclude that although the State of Ohio may as a matter of its own law privilege the press in the circumstances of this case, the First and Fourteenth Amendments do not require it to do so." *Zacchini* v. *Scripps-*

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*We express no opinion as to the correctness of the Supreme Court of Georgia's application of the *Witt* standard in this case.

Howard Broadcasting Co., 433 U. S. 562, 578–579 (1977). Here, too, the Supreme Court of Georgia is free to adopt the rule laid down in *Witt* for review of trial court findings in jury-selection cases, but it need not do so. The motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are therefore granted, the judgment of the Supreme Court of Georgia is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

UNITED STATES *v.* WATTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 95–1906. Decided January 6, 1997*

Respondent Watts was convicted of possessing cocaine base with intent to distribute, but acquitted of using a firearm in relation to a drug offense. Despite this, the District Court found by a preponderance of the evidence that Watts possessed guns in connection with the drug offense, and therefore added two points to his base offense level when calculating his sentence under the United States Sentencing Guidelines. In a separate case, respondent Putra was convicted of aiding and abetting possession with intent to distribute cocaine on May 8, 1992, but acquitted of aiding and abetting such a transaction on May 9. Finding by a preponderance of the evidence that she had been involved in the May 9 transaction, the District Court calculated her Guidelines' base offense level by aggregating the amounts of both sales. In each of these cases, the Ninth Circuit held that the sentencing courts could not consider respondents' conduct underlying the charges of which they had been acquitted.

Held: A jury's verdict of acquittal does not prevent a sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence. The Ninth Circuit's contrary holdings conflict with the clear implications of 18 U. S. C. § 3661, the Guidelines, and this Court's double jeopardy decisions, particularly *Witte* v. *United States,* 515 U. S. 389. Section 3661 codifies the longstanding principle that sentencing courts have broad discretion to consider various kinds of information, including facts related to charges of which the defendant has been acquitted. Further, this Court has held that consideration of information about a defendant's character and conduct at sentencing does not result in punishment for any offense other than the crime of conviction. *Id.,* at 401. In addition, acquittal merely proves, not that the defendant is innocent, but the existence of a reasonable doubt as to his guilt. Thus, an acquittal does not preclude the Government from relitigating an issue in a subsequent action governed by a lower standard of proof. *Dowling* v. *United States,* 493 U. S. 342, 349. The acquittals below shed no light on

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*Together with *United States* v. *Putra,* also on petition for writ of certiorari to the same court.

whether a preponderance of the evidence either established Putra's participation in the May 9 sale or Watts' use of a firearm in connection with a drug offense.

Certiorari granted; 67 F. 3d 790 and 78 F. 3d 1386, reversed and remanded.

PER CURIAM.

In these two cases, two panels of the Court of Appeals for the Ninth Circuit held that sentencing courts could not consider conduct of the defendants underlying charges of which they had been acquitted. *United States* v. *Watts,* 67 F. 3d 790 (CA9 1995) *(Watts); United States* v. *Putra,* 78 F. 3d 1386 (CA9 1996) *(Putra).* Every other Court of Appeals has held that a sentencing court may do so, if the Government establishes that conduct by a preponderance of the evidence.[1] The Government filed a single petition for certiorari seeking review of both cases, pursuant to this Court's Rule 12.4, to resolve this split. Because the panels' holdings conflict with the clear implications of 18 U. S. C. § 3661, the Sentencing Guidelines, and this Court's decisions, particularly *Witte* v. *United States,* 515 U. S. 389 (1995), we grant the petition and reverse in both cases.

In *Watts,* police discovered cocaine base in a kitchen cabinet and two loaded guns and ammunition hidden in a bedroom closet of Watts' house. A jury convicted Watts of possessing cocaine base with intent to distribute, in violation of

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[1] *United States* v. *Boney,* 977 F. 2d 624, 635–636 (CADC 1992); *United States* v. *Mocciola,* 891 F. 2d 13, 16–17 (CA1 1989) (criticized in dicta in *United States* v. *Lanoue,* 71 F. 3d 966, 984 (CA1 1995)); *United States* v. *Rodriguez-Gonzalez,* 899 F. 2d 177, 180–182 (CA2), cert. denied, 498 U. S. 844 (1990); *United States* v. *Ryan,* 866 F. 2d 604, 608–609 (CA3 1989); *United States* v. *Isom,* 886 F. 2d 736, 738–739 (CA4 1989); *United States* v. *Juarez-Ortega,* 866 F. 2d 747, 748–749 (CA5 1989) *(per curiam); United States* v. *Milton,* 27 F. 3d 203, 208–209 (CA6 1994), cert. denied, 513 U. S. 1085 (1995); *United States* v. *Fonner,* 920 F. 2d 1330, 1332–1333 (CA7 1990); *United States* v. *Dawn,* 897 F. 2d 1444, 1449–1450 (CA8), cert. denied, 498 U. S. 960 (1990); *United States* v. *Coleman,* 947 F. 2d 1424, 1428–1429 (CA10 1991), cert. denied, 503 U. S. 972 (1992); *United States* v. *Averi,* 922 F. 2d 765, 765–766 (CA11 1991) *(per curiam).*

21 U. S. C. § 841(a)(1), but acquitted him of using a firearm in relation to a drug offense, in violation of 18 U. S. C. § 924(c). Despite Watts' acquittal on the firearms count, the District Court found by a preponderance of the evidence that Watts had possessed the guns in connection with the drug offense. In calculating Watts' sentence, the court therefore added two points to his base offense level under United States Sentencing Commission, Guidelines Manual § 2D1.1(b)(1) (Nov. 1995) (USSG). The Court of Appeals vacated the sentence, holding that "a sentencing judge may not, 'under *any* standard of proof,' rely on facts of which the defendant was acquitted." 67 F. 3d, at 797 (quoting *United States* v. *Brady*, 928 F. 2d 844, 851, and n. 12 (CA9 1991), abrogated on other grounds, *Nichols* v. *United States*, 511 U. S. 738 (1994)) (emphasis added in *Watts*). The Government argued that the District Court could have enhanced Watts' sentence without considering facts "necessarily rejected" by the jury's acquittal on the § 924(c) charge because the sentencing enhancement did not require a connection between the firearm and the predicate offense, whereas § 924(c) did. The court rejected this argument, stated that both the enhancement and § 924(c) involved such a connection, and held that the District Court had impermissibly "reconsider[ed] facts that the jury necessarily rejected by its acquittal of the defendant on another count." 67 F. 3d, at 796.

In *Putra*, authorities had videotaped two transactions in which Putra and a codefendant (a major drug dealer) sold cocaine to a Government informant. The indictment charged Putra with, among other things, one count of aiding and abetting possession with intent to distribute one ounce of cocaine on May 8, 1992; and a second count of aiding and abetting possession with intent to distribute five ounces of cocaine on May 9, 1992, both in violation of 21 U. S. C. § 841(a)(1) and 18 U. S. C. § 2. The jury convicted Putra on the first count but acquitted her on the second. At sentencing, however, the District Court found by a preponderance of the evidence that Putra had indeed been involved in the May 9 transaction. The District Court explained that the second sale was relevant conduct under USSG § 1B1.3, and it therefore calculated Putra's base offense level under the Guidelines by aggregating the amounts of both sales. As in *Watts*, the Court of Appeals vacated and remanded for resentencing. Reasoning that the jury's verdict of acquittal manifested an "explicit rejection" of Putra's involvement in the May 9 transaction, the Court of Appeals held that "allowing an increase in Putra's sentence would be effectively punishing her for an offense for which she has been acquitted." 78 F. 3d, at 1389. The panel explained that it was imposing "a judicial limitation on the facts the district court may consider at sentencing, beyond any limitation imposed by the Guidelines." *Ibid.* Then-Chief Judge Wallace dissented, arguing that the panel's "sweeping language contradicts the Guidelines, our practice prior to enactment of the Guidelines, decisions of other circuits, and recent Supreme Court authority." *Id.*, at 1390.

We begin our analysis with 18 U. S. C. § 3661, which codifies the longstanding principle that sentencing courts have broad discretion to consider various kinds of information. The statute states:

> "No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."

We reiterated this principle in *Williams* v. *New York*, 337 U. S. 241 (1949), in which a defendant convicted of murder and sentenced to death challenged the sentencing court's reliance on information that the defendant had been involved in 30 burglaries of which he had not been convicted. We contrasted the different limitations on presentation of evidence at trial and at sentencing: "Highly relevant—if not essential—to [the judge's] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics." *Id.*, at 247 (footnote omitted); see *Nichols, supra,* at 747 (noting that sentencing courts have traditionally and constitutionally "considered a defendant's past criminal behavior, even if no conviction resulted from that behavior") (citing *Williams, supra*); *BMW of North America, Inc.* v. *Gore*, 517 U. S. 559, 573, n. 19 (1996) ("A sentencing judge may even consider past criminal behavior which did not result in a conviction") (citing *Williams, supra*). Neither the broad language of § 3661 nor our holding in *Williams* suggests any basis for the courts to invent a blanket prohibition against considering certain types of evidence at sentencing. Indeed, under the pre-Guidelines sentencing regime, it was "well established that a sentencing judge may take into account facts introduced at trial relating to other charges, even ones of which the defendant has been acquitted." *United States* v. *Donelson,* 695 F. 2d 583, 590 (CADC 1982) (Scalia, J.).

The Guidelines did not alter this aspect of the sentencing court's discretion. " '[V]ery roughly speaking, [relevant conduct] corresponds to those actions and circumstances that courts typically took into account when sentencing prior to the Guidelines' enactment.' " *Witte, supra,* at 402 (quoting *United States* v. *Wright,* 873 F. 2d 437, 441 (CA1 1989) (Breyer, J.)). Section 1B1.4 of the Guidelines reflects the policy set forth in 18 U. S. C. § 3661:

> "In determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, without limitation, any information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law. *See* 18 U. S. C. § 3661."

Section 1B1.3, in turn, describes in sweeping language the conduct that a sentencing court may consider in determining the applicable guideline range. The commentary to that section states: "Conduct that is not formally charged or is not an element of the offense of conviction may enter into the determination of the applicable guideline sentencing range." USSG § 1B1.3, comment., backg'd. With respect to certain offenses, such as Putra's drug conviction, USSG § 1B1.3(a)(2) requires the sentencing court to consider "all acts and omissions . . . that were part of the same course of conduct or common scheme or plan as the offense of conviction." Application Note 3 explains that "[a]pplication of this provision does not require the defendant, in fact, to have been convicted of multiple counts." The Note also gives the following example:

> "[W]here the defendant engaged in three drug sales of 10, 15, and 20 grams of cocaine, as part of the same course of conduct or common scheme or plan, subsection (a)(2) provides that the total quantity of cocaine involved (45 grams) is to be used to determine the offense level even if the defendant is convicted of a single count charging only one of the sales."

Accordingly, the Guidelines conclude that "[r]elying on the entire range of conduct, regardless of the number of counts that are alleged *or on which a conviction is obtained,* appears to be the most reasonable approach to writing workable guidelines for these offenses." USSG § 1B1.3, comment., backg'd (emphasis added).

Although JUSTICE STEVENS' dissent concedes that a district court may properly consider "evidence adduced in a trial that resulted in an acquittal" when choosing a particular sentence within a guideline range, it argues that the court must close its eyes to acquitted conduct at earlier stages of the sentencing process because the "broadly inclusive language of § 3661" is incorporated only into § 1B1.4 of the Guidelines. *Post,* at 162. This argument ignores § 1B1.3 which, as we have noted, directs sentencing courts to consider all other related conduct, whether or not it resulted in a conviction. JUSTICE STEVENS also contends that because Congress instructed the Sentencing Commission, in 28 U. S. C. § 994(*l*), to ensure that the Guidelines provide incremental punishment for a defendant who is convicted of multiple offenses, it could not have meant for the Guidelines to increase a sentence based on offenses of which a defendant has been acquitted. *Post,* at 168. The statute is not, however, "cast in restrictive or exclusive terms." *United States* v. *Ebbole,* 917 F. 2d 1495, 1501 (CA7 1990). Far from limiting a sentencing court's power to consider uncharged or acquitted conduct, § 994(*l*) simply ensures that, at a minimum, the Guidelines provide additional penalties when defendants are convicted of multiple offenses. *Ibid.* If we accepted JUSTICE STEVENS' logic, § 994(*l*) would prohibit a district court from considering acquitted conduct for any sentencing purposes, whether for setting the guidelines range or for choosing a sentence within that range—a novel proposition that JUSTICE STEVENS does not defend. *Post,* at 162. In short, we are convinced that a sentencing court may consider conduct of which a defendant has been acquitted.

The Court of Appeals' position to the contrary not only conflicts with the implications of the Guidelines, but it also seems to be based on erroneous views of our double jeopardy jurisprudence. The Court of Appeals asserted that, when a sentencing court considers facts underlying a charge on which the jury returned a verdict of not guilty, the defendant "'suffer[s] punishment for a criminal charge for which he or she was acquitted.'" *Watts,* 67 F. 3d, at 797 (quoting *Brady,* 928 F. 2d, at 851). As we explained in *Witte,* however, sentencing enhancements do not punish a defendant for crimes of which he was not convicted, but rather increase his sentence because of the manner in which he committed the crime of conviction. 515 U. S., at 402–403. In *Witte,* we held that a sentencing court could, consistent with the Double Jeopardy Clause, consider uncharged cocaine importation in imposing a sentence on marijuana charges that was within the statutory range, without precluding the defendant's subsequent prosecution for the cocaine offense. We concluded that "consideration of information about the defendant's character and conduct at sentencing does not result in 'punishment' for any offense other than the one of which the defendant was convicted." *Id.*, at 401. Rather, the defendant is "punished only for the fact that the *present* offense was carried out in a manner that warrants increased punishment . . . ." *Id.*, at 403; see also *Nichols*, 511 U. S., at 747.

The Court of Appeals likewise misunderstood the preclusive effect of an acquittal, when it asserted that a jury " 'reject[s]' " some facts when it returns a general verdict of not guilty. *Putra*, 78 F. 3d, at 1389 (quoting *Brady, supra*, at 851). The Court of Appeals failed to appreciate the significance of the different standards of proof that govern at trial and sentencing. We have explained that "acquittal on criminal charges does not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt." *United States* v. *One Assortment of 89 Firearms*, 465 U. S. 354, 361 (1984). As then-Chief Judge Wallace pointed out in his dissent in *Putra*, it is impossible to know exactly why a jury found a defendant not guilty on a certain charge.

> "[A]n acquittal is not a finding of any fact. An acquittal can only be an acknowledgment that the government failed to prove an essential element of the offense beyond a reasonable doubt. Without specific jury findings, no one can logically or realistically draw any factual finding inferences . . . ." 78 F. 3d, at 1394.

Thus, contrary to the Court of Appeals' assertion in *Brady, supra*, at 851, the jury cannot be said to have "necessarily rejected" any facts when it returns a general verdict of not guilty.

For these reasons, "an acquittal in a criminal case does not preclude the Government from relitigating an issue when it is presented in a subsequent action governed by a lower standard of proof." *Dowling* v. *United States*, 493 U. S. 342, 349 (1990). The Guidelines state that it is "appropriate" that facts relevant to sentencing be proved by a preponderance of the evidence, USSG § 6A1.3, comment., and we have held that application of the preponderance standard at sentencing generally satisfies due process. *McMillan* v. *Pennsylvania*, 477 U. S. 79, 91–92 (1986); *Nichols, supra,* at 747–748. We acknowledge a divergence of opinion among the Circuits as to whether, in extreme circumstances, relevant conduct that would dramatically increase the sentence must be based on clear and convincing evidence.[2] The cases before us today do not present such exceptional circumstances, and we therefore do not address that issue. We therefore hold that a jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence.

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[2] See *McMillan*, 477 U. S., at 88 (upholding use of preponderance standard where there was no allegation that the sentencing enhancement was "a tail which wags the dog of the substantive offense"); *Kinder* v. *United States*, 504 U. S. 946, 948–949 (1992) (White, J., dissenting from denial of certiorari) (acknowledging split); *United States* v. *Kikumura*, 918 F. 2d 1084, 1102 (CA3 1990) (holding that clear-and-convincing standard is implicit in 18 U. S. C. § 3553(b), which requires a sentencing court to "find" certain facts in order to justify certain large upward departures; not reaching the due process issue); *United States* v. *Gigante*, 39 F. 3d 42, 48 (CA2 1994), as amended, 94 F. 3d 53, 56 (1996) (not reaching due process issue; "In our view, the preponderance standard is no more than a *threshold* basis for adjustments and departures, and the weight of the evidence, at some point along a continuum of sentence severity, should be considered with regard to both upward adjustments and upward departures. . . . Where a higher standard, appropriate to a substantially enhanced sentence range, is not met, the court should depart downwardly"); *United States* v. *Lombard*, 72 F. 3d 170, 186–187 (CA1 1995) (authorizing downward departure in "an unusual and perhaps a singular case" that may have "exceeded" constitutional limits, where acquitted conduct calling for an "enormous" sentence enhancement "is itself very serious conduct," "where the ultimate sentence is itself enormous, and where the judge is seemingly mandated to impose that sentence"); see also *United States* v. *Townley*, 929 F. 2d 365, 369 (CA8 1991) ("At the very least, *McMillan* allows for the possibility that the preponderance standard the Court approved for garden variety sentencing determinations may fail to comport with due proc-

Accordingly, the Court of Appeals erred in both cases before us today. In *Putra,* the jury simply found that the prosecution had not proved the defendant's complicity in the May 9 sale beyond a reasonable doubt. The acquittal sheds no light on whether a preponderance of the evidence established Putra's participation in that transaction. Likewise, in *Watts,* the jury acquitted the defendant of using or carrying a firearm during or in relation to the drug offense. That verdict does not preclude a finding by a preponderance of the evidence that the defendant did, in fact, use or carry such a weapon, much less that he simply *possessed* the weapon in connection with a drug offense.

The petition for certiorari is granted, the judgments of the Court of Appeals are reversed, and the cases are remanded for further proceedings consistent with this opinion. Respondent Putra's motion to proceed *in forma pauperis* is granted. The motion of Morris L. Whitman for leave to file a brief as *amicus curiae* is granted.

It is so ordered.

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ess where, as here, a sentencing enhancement factor becomes 'a tail which wags the dog of the substantive offense'") (quoting *McMillan, supra,* at 88); *United States* v. *Restrepo,* 946 F. 2d 654, 656, n. 1 (CA9 1991) (en banc) (suggesting that clear-and-convincing evidence might be required for extraordinary upward adjustments or departures), cert. denied, 503 U. S. 961 (1992); *United States* v. *Lam Kwong-Wah,* 966 F. 2d 682, 688 (CADC) (same), cert. denied, 506 U. S. 901 (1992); *United States* v. *Trujillo,* 959 F. 2d 1377, 1382 (CA7) (same), cert. denied, 506 U. S. 897 (1992). But see *United States* v. *Washington,* 11 F. 3d 1510, 1516 (CA10 1993) ("At least as concerns making guideline calculations the issue of a higher than a preponderance standard is foreclosed in this circuit"), cert. denied, 511 U. S. 1020 (1994).

JUSTICE SCALIA, concurring.

I do not agree with the assertion in JUSTICE BREYER's concurrence that there is no obstacle to the Sentencing Commission's reversing today's outcome by mandating disregard of the information we today hold it proper to consider. Title 28 U. S. C. § 994(b)(1) requires the Guidelines to be "consistent with all pertinent provisions of title 18, United States Code." In turn, 18 U. S. C. § 3661 provides that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." In my view, neither the Commission nor the courts have authority to decree that information which would otherwise justify enhancement of sentence or upward departure from the Guidelines may not be considered for that purpose (or may be considered only after passing some higher standard of probative worth than the Constitution and laws require) if it pertains to acquitted conduct. If the Commission believes that the rules of evidence and proof established by the Constitution and laws are inadequate, it may of course recommend changes to the Congress, cf. 28 U. S. C. § 994(w).

JUSTICE BREYER, concurring.

I join the Court's *per curiam* opinion while noting that it poses no obstacle to the Sentencing Commission itself deciding whether or not to enhance a sentence on the basis of conduct that a sentencing judge concludes did take place, but in respect to which a jury acquitted the defendant.

In telling judges in ordinary cases to consider "all acts and omissions . . . that were part of the same course of conduct or common scheme or plan as the offense of conviction," United States Sentencing Commission, Guidelines Manual § 1B1.3(a)(2) (Nov. 1995) (USSG), the Guidelines recognize the fact that before their creation sentencing judges often took account, not only of the precise conduct that made up the offense of conviction, but of certain related conduct as well. And I agree with the Court that the Guidelines, as presently written, do not make an exception for related conduct that was the basis for a different charge of which a jury acquitted that defendant. To that extent, the Guidelines' policy rests upon the logical possibility that a sentencing judge and a jury, applying different evidentiary standards, could reach different factual conclusions.

This truth of logic, however, is not the only pertinent policy consideration. The Commission in the past has considered whether the Guidelines should contain a specific exception to their ordinary "relevant conduct" rules that would instruct the sentencing judge not to base a sentence enhancement upon acquitted conduct. United States Sentencing Commission, Sentencing Guidelines for United States Courts, 57 Fed. Reg. 62832 (1992) (proposed USSG § 1B1.3(c)). Given the role that juries and acquittals play in our system, the Commission could decide to revisit this matter in the future. For this reason, I think it important to specify that, as far as today's decision is concerned, the power to accept or reject such a proposal remains in the Commission's hands.

JUSTICE STEVENS, dissenting.

"The Sentencing Reform Act of 1984 revolutionized the manner in which district courts sentence persons convicted of federal crimes." *Burns* v. *United States*, 501 U. S. 129, 132 (1991). The goals of rehabilitation and fairness served by individualized sentencing that formerly justified vesting judges with virtually unreviewable sentencing discretion have been replaced by the impersonal interest in uniformity and retribution.[1] Strict mandatory rules have dramatically confined the exercise of judgment based on a totality of the circumstances. "While the products of the Sentencing Commission's labors have been given the modest name 'Guidelines,' . . . they have the force and effect of laws, prescribing the sentences criminal defendants are to receive. A judge who disregards them will be reversed." *Mistretta* v. *United States*, 488 U. S. 361, 413 (1989) (SCALIA, J., dissenting).

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[1] Compare *Williams* v. *New York*, 337 U. S. 241, 247–248 (1949) ("Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence"), with 28 U. S. C. § 994(k) (rejecting rehabilitation as a goal of imprisonment) and 18 U. S. C. § 3553(a)(2) (stating that punish-

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In 1970, during the era of individualized sentencing, Congress enacted the statute now codified as 18 U. S. C. § 3661 to make it clear that otherwise inadmissible evidence could be considered by judges in the exercise of their sentencing discretion. The statute, however, did not tell the judge how to weigh the significance of any of that evidence. The judge was free to rely on any information that might shed light on a decision to grant probation, to impose the statutory maximum, or to determine the precise sentence within those extremes. Wisdom and experience enabled the judge to give appropriate weight to uncorroborated hearsay or to evidence of criminal conduct that had not resulted in a conviction. Even if convinced that a jury had erroneously acquitted a defendant, the judge was not required to ignore the evidence of guilt. At the same time, however, he or she was free to discount the significance of that evidence if mitigating circumstances—perhaps the same facts that persuaded the jury that an acquittal was appropriate—were present. Like a jury in a capital case, the judge could exercise discretion "to dispense mercy on the basis of factors too intangible to write into a statute," *Gregg* v. *Georgia*, 428 U. S. 153, 222 (1976) (White, J., concurring in judgment).

Although the Sentencing Reform Act of 1984 has cabined the discretion of sentencing judges, the 1970 statute remains on the books. As was true when it was enacted, § 3661 does

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ment should serve retributive, deterrent, educational, and incapacitative goals).

not speak to questions concerning the relevance or the weight of any item of evidence. That statute is not offended by provisions in the Guidelines that proscribe reliance on evidence of economic hardship, drug or alcohol dependence, or lack of guidance as a youth in making certain sentencing decisions. See *Koon* v. *United States,* 518 U. S. 81, 93 (1996). Conversely, that statute does not command that any particular weight—or indeed that any weight at all—be given to evidence that a defendant may have committed an offense that the prosecutor failed to prove beyond a reasonable doubt. In short, while the statute that introduces the Court's analysis of these cases, *ante,* at 151, does support its narrow holding that sentencing courts may sometimes "consider conduct of the defendants underlying other charges of which they had been acquitted," *ante,* at 149, it sheds no light on whether the district judges' application of the Guidelines in the manner presented in these cases was authorized by Congress, or is allowed by the Constitution.

A closer examination of the interaction among § 3661, the other provisions of the Sentencing Reform Act, and the Guidelines demonstrates that the role played by § 3661 is of a narrower scope than the Court's opinion suggests. The Sentencing Reform Act was enacted primarily to address Congress' concern that similar offenders convicted of similar offenses were receiving "an unjustifiably wide range of sentences." S. Rep. No. 98–225, p. 38 (1983). It therefore created the Sentencing Commission and directed it to draft Guidelines that would cabin the discretion of all judges—those who were too harsh as well as those who were too lenient. See 28 U. S. C. § 991(b)(1)(B). While the abolition of parole indicates that the new rules were generally intended to increase the minimum levels of punishment, see 18 U. S. C. §§ 3624(a) and (b), they also confined the judges' authority to impose the maximum sentences authorized by statute. The central mechanism that Congress promulgated to avoid disparate sentencing in typical cases is a requirement that for any sentence of imprisonment in the Guidelines, "the maximum of the range established for such a term shall not exceed the minimum of that range by more than the greater of 25 percent or 6 months," 28 U. S. C. § 994(b)(2). The determination of which of these narrow ranges a particular sentence should fall into is made by operation of mandatory rules, but within the particular range, the judge retains broad discretion to set a particular sentence.

By their own terms, the Guidelines incorporate the broadly inclusive language of § 3661 only into those portions of the sentencing decision in which the judge retains discretion.

United States Sentencing Commission, Guidelines Manual § 1B1.4 (Nov. 1995) (USSG) provides:

> "In determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, without limitation, any information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law. *See* 18 U. S. C. § 3661."

Thus, as in the pre-Guidelines sentencing regime, it is in the area in which the judge exercises discretion that § 3661 authorizes unlimited access to information concerning the background, character, and conduct of the defendant. When the judge is exercising such discretion, I agree that he or she may consider otherwise inadmissible evidence, including evidence adduced in a trial that resulted in an acquittal. But that practice, enshrined in § 3661 and USSG § 1B1.4, sheds little, if any, light on the appropriateness of the District Courts' application of USSG § 1B1.3, which defines relevant conduct for the purposes of determining the Guidelines range within which a sentence can be imposed.

II

The issue of law raised by the sentencing of Cheryl Putra involved the identification of the offense level that determined the range within which the judge could exercise discretion. Because she was a first offender with no criminal history, that range was based entirely on the offense or offenses for which she was to be punished. She was found guilty of aiding and abetting the intended distribution of one ounce of cocaine on May 8, 1992, but not guilty of participating in a similar transaction involving five ounces of cocaine on May 9, 1992. *United States* v. *Putra*, 78 F. 3d 1386, 1387 (CA9 1996). If the guilty verdict provided the only basis for imposing punishment on Ms. Putra, the Guidelines would have required the judge to impose a sentence of no less than 15 months in prison and would have prohibited him from imposing a sentence longer than 21 months.

If Putra had been found guilty of also participating in the 5-ounce transaction on May 9, 1992, the Guidelines would have required that both the minimum and the maximum sentences be increased; the range would have been between 27 and 33 months. As the District Court applied the Guidelines, precisely the same range resulted from the acquittal as would have been dictated by a conviction. Notwithstanding the absence of sufficient evidence to prove guilt beyond a reasonable doubt, the alleged offense on May 9 led to the imposition of a sentence six months longer than the maximum permitted for the only crime that provided any basis for punishment.[2]

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[2] The circumstances surrounding Vernon Watts' sentencing were somewhat different from those involved in Putra's sentencing. Watts was acquitted of the crime of using a firearm in relation to a drug offense, in violation of 18 U. S. C. § 924(c), but was found guilty of certain drug crimes. *United States* v. *Watts*, 67 F. 3d 790, 793 (CA9 1995). The sentencing judge enhanced Watts' base offense level by two points, pursuant to USSG § 2D1.1(b)(1), after concluding that the defendant's "possession" of the firearm in connection with the crime had been proved by a preponderance of the evidence. 67 F. 3d, at 797–798. Because the "use" of a firearm and its "possession" are not identical, the judge may not have relied on facts necessarily rejected by the jury in concluding that the sentencing enhancement was appropriate. I nevertheless believe that the enhancement

In my judgment neither our prior cases nor the text of the statute warrants this perverse result. And the vigor of the debate among judges in the Courts of Appeals on this basic issue belies the ease with which the Court addresses it, without hearing oral argument or allowing the parties to fully brief the issues.[3]

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was inappropriate because it was based on conduct that the judge found only by a preponderance of the evidence. Since Watts' base offense level was increased by this evidence, I believe it should have been proved beyond a reasonable doubt.

[3] Although the Court's decision suggests that the approach taken by the Ninth Circuit in these cases breaks from settled law in every other Circuit, the opinion ignores the fact that respected jurists all over the country have been critical of the interaction between the Sentencing Guidelines' mechanical approach and the application of a preponderance of the evidence standard to so-called relevant conduct. See, *e. g., United States* v. *Silverman,* 976 F. 2d 1502, 1519, 1527 (CA6 1992) (Merritt, C. J., dissenting); *id.,* at 1533 (Martin, J., dissenting); *United States* v. *Concepcion,* 983 F. 2d 369, 389, 396 (CA2 1992) (Newman, C. J., concurring) ("A just system of criminal sentencing cannot fail to distinguish between an allegation of conduct resulting in a conviction and an allegation of conduct resulting in an acquittal"); *United States* v. *Galloway,* 976 F. 2d 414, 436 (CA8 1992) (Bright, J., dissenting, joined by Arnold, C. J., Lay, J., and McMillian, J.); *United States* v. *Restrepo,* 946 F. 2d 654, 663 (CA9 1991) (Pregerson, J., dissenting, joined by Hug, J.); *id.,* at 664 (Norris, J., dissenting, joined by Hug, J., Pregerson, J., and D. W. Nelson, J.). Cf. *United States* v. *Lanoue,* 71 F. 3d 966, 984 (CA1 1995) ("Although it makes no difference in this case, we believe that a defendant's Fifth and Sixth Amendment right to have a jury determine his guilt beyond a reasonable doubt is trampled when he is imprisoned (for any length of time) on the basis of conduct of which a jury has necessarily acquitted him"). See also Martin, The Cornerstone Has No Foundation: Relevant Conduct in Sentencing and the Requirements of Due Process, 3 Const. L. J. 25, 34–36 (1993); Beale, Procedural Issues Raised by Guidelines Sentencing: The Constitutional Significance of the "Elements of the Sentence," 35 Wm. & Mary L. Rev. 147, 157–158 (1993); Herman, The Tail that Wagged the Dog: Bifurcated Fact-Finding under the Federal Sentencing Guidelines and the Limits of Due Process, 66 S. Cal. L. Rev. 289 (1992); Heaney, The Reality of Guidelines Sentencing: No End to Disparity, 28 Am. Crim. L. Rev. 161, 208–220 (1991).

III

The Court relies principally on three cases—*Williams* v. *New York*, 337 U. S. 241 (1949); *McMillan* v. *Pennsylvania*, 477 U. S. 79 (1986); and *Witte* v. *United States*, 515 U. S. 389 (1995)—to justify its outcome. In each instance, the reliance is misplaced.

For three reasons, *Williams* cannot support the result in these cases. First, it dealt with the exercise of the sentencing judge's discretion within the range authorized by law, rather than with rules defining the range within which discretion may be exercised. Second, "[t]he accuracy of the statements made by the judge as to appellant's background and past practices was not challenged by appellant or his counsel, nor was the judge asked to disregard any of them or to afford appellant a chance to refute or discredit any of them by cross-examination or otherwise." 337 U. S., at 244. The precise question here—the burden of proof applicable to sentencing facts—was thus not before the Court in that case. Third, its rationale depended largely on agreement with an individualized sentencing regime that is significantly different from the Guidelines system. "*Williams* was decided in the context of a sentencing 'system that focuse[d] on subjective assessments of rehabilitative potential. . . .' Saltzburg, [Sentencing Procedures: Where Does Responsibility Lie?, 4 Fed. Sent. Rep. 248, 250 (1992)]." *United States* v. *Wise*, 976 F. 2d 393, 409 (CA8 1992) (Arnold, C. J., concurring in part and dissenting in part). As this Court has acknowledged, see *Burns*, 501 U. S., at 132, the Guidelines wrought a dramatic change in sentencing processes, replacing the very system that justified *Williams* with a rigid system in which, "[f]or most defendants in the federal courts, sentencing is what the case is really about." *Wise*, 976 F. 2d, at 409.

Even more than *Williams*, this Court, like all of the Circuits that have adopted the same approach as the District Courts in these cases, relies primarily on the misguided

5-to-4 decision in *McMillan* v. *Pennsylvania,* 477 U. S. 79 (1986). For the reasons stated in my dissent in that case, *id.*, at 95–104, I continue to believe that it was incorrectly decided and that its holding should be reconsidered. Even accepting its holding that the Constitution does not require proof beyond a reasonable doubt to establish a sentencing factor that increases the minimum sentence without altering the maximum, however, there are at least two reasons why *McMillan* does not dictate the outcome of these cases.

In *McMillan,* as in these cases, the defendant's minimum sentence was enhanced on the basis of a fact proved by a preponderance of the evidence. But in *McMillan,* the maximum was unchanged; the sentence actually imposed was within the range that would have been available to the judge even if the enhancing factor had not been proved. In these cases, however, the sentences actually imposed were higher than the Guidelines would have allowed without evidence of the additional offenses. The *McMillan* opinion pointedly noted that the Pennsylvania statute had not altered "the maximum penalty for the crime committed" and operated "solely to limit the sentencing court's discretion in selecting a penalty within the range already available to it without the special finding of visible possession of a firearm." *Id.*, at 87–88. Given the Court's acknowledged "inability to lay down any 'bright line' test" that would define the limits of its holding, *id.*, at 91, and its apparent assumption that a sentencing factor should not be allowed to serve as a "tail which wags the dog of the substantive offense," *id.*, at 88, see also *ante,* at 156–157, n. 2, the holding should not be extended to allow a fact proved by only a preponderance to increase the entire range of penalties within which the sentencing judge may lawfully exercise discretion.[4]

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[4] I recognize that the shift from one Guideline range to a higher range does not produce a sentence beyond the statutory maximum. It does, however, mandate a sentence that is above the maximum that the judge

Moreover, *McMillan* addressed only the constitutionality of a statute the meaning of which was perfectly clear. Nothing in the text of the Sentencing Reform Act of 1984 even arguably mandates the result that the District Courts reached in these cases. Indeed, as JUSTICE BREYER points out in his separate concurrence, *ante,* at 159, the Sentencing Commission unquestionably has the authority to disallow the consideration of acquitted conduct. Similarly, the Commission could have chosen to set the burden of proof for sentencing proceedings at beyond a reasonable doubt without running afoul of the enabling legislation. Given the lack of a contrary command in the statute itself, as well as the complete absence of any pre-1984 precedent for establishing the range of a permissible sentence on the basis of a fact proved only by a preponderance of the evidence, the *McMillan* opinion which was announced in 1986 can shed no light on the meaning of the 1984 Act.

Nor does the Court's decision in *Witte* v. *United States,* 515 U. S. 389 (1995), dictate the answer to the question presented by these cases. I continue to disagree with the conclusion reached by the Court in *Witte,* that the Double Jeopardy Clause does not prohibit convicting and sentencing an individual for conduct that has been decisive in determining the individual's offense level for a previous conviction. But that is a different issue from the one here. The opinion in *Witte,* carefully and repeatedly, confined the Court's holding to the double jeopardy context. *Id.,* at 397 (defendant in this case "is punished, for double jeopardy purposes, only for the offense of which the defendant is convicted"); *id.,* at 399 (disputed practice is not "punishment for that conduct within the meaning of the Double Jeopardy Clause"); *id.,* at 404 (practice "constitutes punishment only for the offense of conviction for purposes of the double jeopardy inquiry"). What is

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would have had the legal authority to impose absent consideration of the "relevant conduct."

at issue in these cases is not whether a defendant is being twice punished or prosecuted for the same conduct, but whether his or her initial punishment has been imposed pursuant to rules that are authorized by the statute and consistent with the Constitution.

IV

Putra's case involves "multiple offenses." She was charged with several offenses and received a sentence that was based on the judge's conclusion that she was guilty of each of these multiple offenses even though she had in fact been found guilty of only one offense. It is therefore appropriate to consider what the Sentencing Reform Act has to say about "multiple offenses."

In 28 U. S. C. § 994(*l*) Congress specifically directed the Commission to ensure that the Guidelines included incremental sentences for multiple offenses. That subsection provides:

> "The Commission shall insure that the Guidelines promulgated . . . reflect—
>
> "(1) the appropriateness of imposing an incremental penalty for each offense in a case *in which a defendant is convicted of*—
>
> "(A) *multiple offenses* committed in the same course of conduct . . . . ; and
>
> "(B) *multiple offenses* committed at different times . . . ." (Emphasis added.)

It is difficult to square this explicit statutory command to impose incremental punishment for each of the "multiple offenses" of which a defendant "is convicted" with the conclusion that Congress intended incremental punishment for each offense of which the defendant has been acquitted.[5]

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[5] Courts upholding the Guidelines' relevant conduct provisions and their application in cases such as these have tended to focus their attention exclusively on those provisions in the statute that direct courts and the Commission to consider the "nature and circumstances of the offense" in

The Court, however, appears willing to read the statute's treatment of multiple offenses as though it authorized an incremental penalty for each offense for which the defendant was indicted if she is convicted of at least one such offense. The fact that the text of the statute expressly authorizes such incremental punishment "for each offense" only when a "defendant is convicted of . . . multiple offenses" conveys a far different message to thoughtful judges.[6]

In my opinion the statute should be construed in the light of the traditional requirement that criminal charges must be sustained by proof beyond a reasonable doubt. That requirement has always applied to charges involving multiple offenses as well as a single offense. Whether an allegation of criminal conduct is the sole basis for punishment or merely one of several bases for punishment, we should presume that Congress intended the new sentencing Guidelines that it authorized in 1984 to adhere to longstanding procedural requirements enshrined in our constitutional jurisprudence.

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determining an appropriate sentence. 18 U. S. C. § 3553(a)(1); see also 28 U. S. C. § 994(d). In § 994(d), Congress granted the Sentencing Commission the authority to "consider whether [certain enumerated factors], among others, have any relevance" in establishing Guidelines for offenses. Some courts have concluded that the inclusion of the qualifier "among others" in this provision indicated that Congress intended the Commission to include anything it felt was relevant to the sentencing decision. See, *e. g., United States* v. *Galloway,* 976 F. 2d, at 420–421; *United States* v. *Thomas,* 932 F. 2d 1085, 1089 (CA5 1991), cert. denied *sub nom. Pullock* v. *United States,* 502 U. S. 895, and *Samuels* v. *United States,* 502 U. S. 962 (1992).

But this provision cannot be read separately from the rest of the statute. The clear congressional directive concerning sentencing for "multiple offenses" must be read as an important limit on the "othe[r]" factors that can be considered relevant to determination of an offense level.

[6] Some judges have concluded, in large part because of this provision, that the Guidelines' relevant conduct rules are outside the scope of the authority Congress granted to the Commission. See *Galloway,* 976 F. 2d, at 430–431 (Beam, J., dissenting); *United States* v. *Davern,* 970 F. 2d 1490, 1507 (CA6 1992) (Merritt, C. J., dissenting).

The notion that a charge that cannot be sustained by proof beyond a reasonable doubt may give rise to the same punishment as if it had been so proved is repugnant to that jurisprudence.

I respectfully dissent.

JUSTICE KENNEDY, dissenting.

A case can be made for summary reversal here, based on such factors as the conflict between the rationale of the Court of Appeals for the Ninth Circuit and the rationale of this Court in *Williams* v. *New York,* 337 U. S. 241 (1949), and, to a lesser extent, in *Witte* v. *United States,* 515 U. S. 389 (1995); the conflict the Ninth Circuit created, without considering en banc its departure from the rule followed in all other Circuits; and the lack of any clear authority to constrain the sentencing judge as the Court of Appeals seeks to do.

On the other hand, it must be noted the cases raise a question of recurrent importance in hundreds of sentencing proceedings in the federal criminal system. We have not decided a case on this precise issue, for it involves not just prior criminal history but conduct underlying a charge for which the defendant was acquitted. At several points the *per curiam* opinion shows hesitation in confronting the distinction between uncharged conduct and conduct related to a charge for which the defendant was acquitted. The distinction ought to be confronted by a reasoned course of argument, not by shrugging it off.

At the least it ought to be said that to increase a sentence based on conduct underlying a charge for which the defendant was acquitted does raise concerns about undercutting the verdict of acquittal, concerns noted by JUSTICE STEVENS and the other federal judges to whom he refers in his dissent. If there is no clear answer but to acknowledge a theoretical contradiction from which we cannot escape because of overriding practical considerations, at least we ought to say so.

Finally, as JUSTICE STEVENS further points out, the effect of the Sentencing Reform Act of 1984 on this question deserves careful exploration. This is illustrated by the fact that JUSTICES SCALIA and BREYER each find it necessary to issue separate opinions setting forth differing views on the role of the Sentencing Commission.

For these reasons the cases should have been set for full briefing and consideration on the oral argument calendar. From the Court's failure to do so, I dissent.

OLD CHIEF *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 95–6556. Argued October 16, 1996—Decided January 7, 1997

After a fracas involving at least one gunshot, petitioner, Old Chief, was charged with, *inter alia,* violating 18 U. S. C. § 922(g)(1), which prohibits possession of a firearm by anyone with a prior felony conviction. He offered to stipulate to § 922(g)(1)'s prior-conviction element, arguing that his offer rendered evidence of the name and nature of his prior offense—assault causing serious bodily injury—inadmissible because its "probative value [was] substantially outweighed by the danger of unfair prejudice . . . ," Fed. Rule Evid. 403. The Government refused to join the stipulation, however, insisting on its right to present its own evidence of the prior conviction, and the District Court agreed. At trial, the Government introduced the judgment record for the prior conviction, and a jury convicted Old Chief. In affirming the conviction, the Court of Appeals found that the Government was entitled to introduce probative evidence to prove the prior offense regardless of the stipulation offer.

Held: A district court abuses its discretion under Rule 403 if it spurns a defendant's offer to concede a prior judgment and admits the full judgment record over the defendant's objection, when the name or nature of the prior offense raises the risk of a verdict tainted by improper considerations, and when the purpose of the evidence is solely to prove the element of prior conviction. Pp. 178–192.

(a) Contrary to Old Chief's position, the name of his prior offense as contained in the official record is relevant to the prior-conviction element. That record made his § 922(g)(1) status "more probable . . . than it [would have been] without the evidence," Fed. Rule Evid. 401; and the availability of alternative proofs, such as his admission, did not affect its evidentiary relevance, see Advisory Committee's Notes on Fed. Rule Evid. 401, 28 U. S. C. App., p. 859. Pp. 178–179.

(b) As to a criminal defendant, Rule 403's term "unfair prejudice" speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on an improper basis rather than on proof specific to the offense charged. Such improper grounds certainly include generalizing from a past bad act that a defendant is by propensity the probable perpetrator of the current crime. Thus, Rule 403 requires that the relative probative value of prior-conviction evidence be balanced against its prejudicial risk of misuse. A judge should balance these factors not only for the item in question but also for any actually available substitutes. If an alternative were found to have substantially the same or greater probative value but a lower danger of unfair prejudice, sound judicial discretion would discount the value of the item first offered and exclude it if its discounted probative value were substantially outweighed by unfairly prejudicial risk. Pp. 180–185.

(c) In dealing with the specific problem raised by § 922(g)(1) and its prior-conviction element, there can be no question that evidence of the name or nature of the prior offense generally carries a risk of unfair prejudice whenever the official record would be arresting enough to lure a juror into a sequence of bad character reasoning. Old Chief sensibly worried about the prejudicial effect of his prior offense. His proffered admission also presented the District Court with alternative, relevant, admissible, and seemingly conclusive evidence of the prior conviction. Thus, while the name of the prior offense may have been technically relevant, it addressed no detail in the definition of the prior-conviction element that would not have been covered by the stipulation or admission. Pp. 185–186.

(d) Old Chief's offer supplied evidentiary value at least equivalent to what the Government's own evidence carried. The accepted rule that the prosecution is entitled to prove its case free from any defendant's option to stipulate the evidence away has virtually no application when the point at issue is a defendant's legal status. Here, the most the jury needed to know was that the conviction admitted fell within the class of crimes that Congress thought should bar a convict from possessing a gun. More obviously, the proof of status went to an element entirely outside the natural sequence of what Old Chief was charged with thinking and doing to commit the current offense. Since there was no cognizable difference between the evidentiary significance of the admission and the official record's legitimately probative component, and since the functions of the competing evidence were distinguishable only by the risk inherent in the one and wholly absent from the other, the only reasonable conclusion was that the risk of unfair prejudice substantially outweighed the conviction record's discounted probative value. Thus, it was an abuse of discretion to admit the conviction record when the defendant's admission was available. Pp. 186–192.

56 F. 3d 75, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which STEVENS, KENNEDY, GINSBURG, and BREYER, JJ., joined. O'CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined, *post*, p. 192.

Daniel Donovan argued the cause for petitioner. With him on the briefs was *Anthony R. Gallagher.*

Miguel A. Estrada argued the cause for the United States. On the brief were *Solicitor General Days, Acting Assistant Attorney General Keeney, Deputy Solicitor General Dreeben, Alan Jenkins,* and *Thomas E. Booth.**

JUSTICE SOUTER delivered the opinion of the Court.

Subject to certain limitations, 18 U. S. C. § 922(g)(1) prohibits possession of a firearm by anyone with a prior felony conviction, which the Government can prove by introducing a record of judgment or similar evidence identifying the previous offense. Fearing prejudice if the jury learns the nature of the earlier crime, defendants sometimes seek to avoid such an informative disclosure by offering to concede the fact of the prior conviction. The issue here is whether a district court abuses its discretion if it spurns such an offer and admits the full record of a prior judgment, when the name or nature of the prior offense raises the risk of a verdict tainted by improper considerations, and when the purpose of the evidence is solely to prove the element of prior conviction.[1] We hold that it does.

I

In 1993, petitioner, Old Chief, was arrested after a fracas involving at least one gunshot. The ensuing federal charges included not only assault with a dangerous weapon and using a firearm in relation to a crime of violence but violation of 18 U. S. C. § 922(g)(1). This statute makes it unlawful for anyone "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year" to "possess in or affecting commerce, any firearm . . . ." "[A] crime punishable by imprisonment for a term exceeding one year" is defined to exclude "any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices" and "any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less." § 921(a)(20).

**Tova Indritz* and *Barbara Bergman* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae.*

[1] The standard of review applicable to the evidentiary rulings of the district court is abuse of discretion. *United States* v. *Abel,* 469 U. S. 45, 54–55 (1984).

The earlier crime charged in the indictment against Old Chief was assault causing serious bodily injury. Before trial, he moved for an order requiring the Government "to refrain from mentioning—by reading the Indictment, during jury selection, in opening statement, or closing argument—and to refrain from offering into evidence or soliciting any testimony from any witness regarding the prior criminal convictions of the Defendant, *except* to state that the Defendant has been convicted of a crime punishable by imprisonment exceeding one (1) year." App. 6. He said that revealing the name and nature of his prior assault conviction would unfairly tax the jury's capacity to hold the Government to its burden of proof beyond a reasonable doubt on current charges of assault, possession, and violence with a firearm, and he offered to "solve the problem here by stipulating, agreeing and requesting the Court to instruct the jury that he has been convicted of a crime punishable by imprisonment exceeding one (1) yea[r]." *Id.*, at 7. He argued that the offer to stipulate to the fact of the prior conviction rendered evidence of the name and nature of the offense inadmissible under Rule 403 of the Federal Rules of Evidence, the danger being that unfair prejudice from that evidence would substantially outweigh its probative value. He also proposed this jury instruction:

> "The phrase 'crime punishable by imprisonment for a term exceeding one year' generally means a crime which is a felony. The phrase does not include any state offense classified by the laws of that state as a misde-

> meanor and punishable by a term of imprisonment of two years or less and certain crimes concerning the regulation of business practices.
>
> "[I] hereby instruct you that Defendant JOHNNY LYNN OLD CHIEF has been convicted of a crime punishable by imprisonment for a term exceeding one year." *Id.*, at 11.[2]

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[2] Proposals for instructing the jury in this case proved to be perilous. We will not discuss Old Chief's proposed instruction beyond saying that, even on his own legal theory, revision would have been required to dispel ambiguity. The jury could not have said whether the instruction that Old Chief had been convicted of a crime punishable by imprisonment for more than one year meant that, as a matter of law, his conviction fell within the definition of "crime punishable by imprisonment for a term exceeding one year," or was instead merely a statement of fact, in which case the jurors could not have determined whether the predicate offense was within one of the statute's categorical exceptions, a "state . . . misdemeanor . . . punishable by a term . . . of two years or less" or a "business" crime. The District Court did not, however, deny Old Chief's motion because of the artless instruction he proposed, but because of the general rule, to be discussed below, that permits the Government to choose its own evidence.

While Old Chief's proposed instruction was defective even under the law as he viewed it, the instruction actually given was erroneous even on the Government's view of the law. The District Court charged, "You have also heard evidence that the defendant has previously been convicted of a felony. You may consider that evidence only as it may affect the defendant's believability as a witness. You may not consider a prior conviction as evidence of guilt of the crime for which the defendant is now on trial." App. 31. This instruction invited confusion. First, of course, if the jury had applied it literally there would have been an acquittal for the wrong reason: Old Chief was on trial for, among other offenses, being a felon in possession, and if the jury had not considered the evidence of prior conviction it could not have found that he was a felon. Second, the remainder of the instruction referred to an issue that was not in the case. While it is true that prior-offense evidence may in a proper case be admissible for impeachment, even if for no other purpose, Fed. Rule Evid. 609, petitioner did not testify at trial; there was no justification for admitting the evidence for impeachment purposes and consequently no basis for the District Court's suggestion that the jurors could consider the prior conviction as impeachment evidence. The fault for this error lies at least as much with Old Chief as with the District Court, since Old Chief apparently sought

The Assistant United States Attorney refused to join in a stipulation, insisting on his right to prove his case his own way, and the District Court agreed, ruling orally that, "If he doesn't want to stipulate, he doesn't have to." *Id.*, at 15–16. At trial, over renewed objection, the Government introduced the order of judgment and commitment for Old Chief's prior conviction. This document disclosed that on December 18, 1988, he "did knowingly and unlawfully assault Rory Dean Fenner, said assault resulting in serious bodily injury," for which Old Chief was sentenced to five years' imprisonment. *Id.*, at 18–19. The jury found Old Chief guilty on all counts, and he appealed.

The Ninth Circuit addressed the point with brevity:

> "Regardless of the defendant's offer to stipulate, the government is entitled to prove a prior felony offense through introduction of probative evidence. *See United States v. Breitkreutz,* 8 F. 3d 688, 690 (9th Cir. 1993) (citing *United States v. Gilman,* 684 F. 2d 616, 622 (9th Cir. 1982)). Under Ninth Circuit law, a stipulation is not proof, and, thus, it has no place in the FRE 403 balancing process. *Breitkreutz,* 8 F. 3d at 691–92.
>
> . . . . .
>
> "Thus, we hold that the district court did not abuse its discretion by allowing the prosecution to introduce evidence of Old Chief's prior conviction to prove that element of the unlawful possession charge." No. 94–30277, 1995 WL 325745, *1 (CA9, May 31, 1995) (unpublished), App. 50–51, judgt. order reported at 56 F. 3d 75 (1995).

We granted Old Chief's petition for writ of certiorari, 516 U. S. 1110 (1996), because the Courts of Appeals have divided sharply in their treatment of defendants' efforts to exclude evidence of the names and natures of prior offenses in cases like this. Compare, *e. g., United States* v. *Burkhart,* 545

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some such instruction and withdrew the request only after the court had charged the jury.

F. 2d 14, 15 (CA6 1976); *United States* v. *Smith,* 520 F. 2d 544, 548 (CA8 1975), cert. denied, 429 U. S. 925 (1976); and *United States* v. *Breitkreutz,* 8 F. 3d 688, 690–692 (CA9 1993) (each recognizing a right on the part of the Government to refuse an offered stipulation and proceed with its own evidence of the prior offense), with *United States* v. *Tavares,* 21 F. 3d 1, 3–5 (CA1 1994) (en banc); *United States* v. *Poore,* 594 F. 2d 39, 40–43 (CA4 1979); *United States* v. *Wacker,* 72 F. 3d 1453, 1472–1473 (CA10 1995); and *United States* v. *Jones,* 67 F. 3d 320, 322–325 (CADC 1995) (each holding that the defendant's offer to stipulate to or to admit to the prior conviction triggers an obligation of the district court to eliminate the name and nature of the underlying offense from the case by one means or another). We now reverse the judgment of the Ninth Circuit.

II

A

As a threshold matter, there is Old Chief's erroneous argument that the name of his prior offense as contained in the record of conviction is irrelevant to the prior-conviction element, and for that reason inadmissible under Rule 402 of the Federal Rules of Evidence.[3] Rule 401 defines relevant evidence as having "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. Rule Evid. 401. To be sure, the fact that Old Chief's prior conviction was for assault resulting in serious bodily injury rather than, say, for theft was not itself an ultimate fact, as if the statute had specifically required proof of injurious assault. But its demonstration was a step on one evidentiary route to the ultimate fact, since it served to place Old Chief within a particular subclass of offenders for whom firearms possession is outlawed by § 922(g)(1). A documentary record of the conviction for that named offense was thus relevant evidence in making Old Chief's § 922(g)(1) status more probable than it would have been without the evidence.

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[3] "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible." Fed. Rule Evid. 402.

Nor was its evidentiary relevance under Rule 401 affected by the availability of alternative proofs of the element to which it went, such as an admission by Old Chief that he had been convicted of a crime "punishable by imprisonment for a term exceeding one year" within the meaning of the statute. The 1972 Advisory Committee Notes to Rule 401 make this point directly:

> "The fact to which the evidence is directed need not be in dispute. While situations will arise which call for the exclusion of evidence offered to prove a point conceded by the opponent, the ruling should be made on the basis of such considerations as waste of time and undue prejudice (see Rule 403), rather than under any general requirement that evidence is admissible only if directed to matters in dispute." Advisory Committee's Notes on Fed. Rule Evid. 401, 28 U. S. C. App., p. 859.

If, then, relevant evidence is inadmissible in the presence of other evidence related to it, its exclusion must rest not on the ground that the other evidence has rendered it "irrelevant," but on its character as unfairly prejudicial, cumulative or the like, its relevance notwithstanding.[4]

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[4] Viewing evidence of the name of the prior offense as relevant, there is no reason to dwell on the Government's argument that relevance is to be determined with respect to the entire item offered in evidence (here, the entire record of conviction) and not with reference to distinguishable subunits of that object (here, the name of the offense and the sentence received). We see no impediment in general to a district court's determination, after objection, that some sections of a document are relevant within

B

The principal issue is the scope of a trial judge's discretion under Rule 403, which authorizes exclusion of relevant evidence when its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. Rule Evid. 403. Old Chief relies on the danger of unfair prejudice.[5]

1

The term "unfair prejudice," as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged. See generally 1 J. Weinstein, M. Berger, & J. McLaughlin, Weinstein's Evidence ¶ 403[03] (1996) (discussing the meaning of "unfair prejudice" under Rule 403). So, the Committee Notes to Rule 403 explain, "'Unfair prejudice' within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Advisory Committee's Notes on Fed. Rule Evid. 403, 28 U. S. C. App., p. 860.

Such improper grounds certainly include the one that Old Chief points to here: generalizing a defendant's earlier bad act into bad character and taking that as raising the odds that he did the later bad act now charged (or, worse, as call-

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the meaning of Rule 401, and others irrelevant and inadmissible under Rule 402.

[5] Petitioner also suggests that we might find a prosecutor's refusal to accept an adequate stipulation and jury instruction in the narrow context presented by this case to be prosecutorial misconduct. The argument is that, since a prosecutor is charged with the pursuit of just convictions, not victory by fair means or foul, any ethical prosecutor must agree to stipulate in the situation here. But any ethical obligation will depend on the construction of Rule 403, and we have no reason to anticipate related ethical lapses once the meaning of the Rule is settled.

ing for preventive conviction even if he should happen to be innocent momentarily). As then-Judge Breyer put it, "Although . . . 'propensity evidence' is relevant, the risk that a jury will convict for crimes other than those charged—or that, uncertain of guilt, it will convict anyway because a bad person deserves punishment—creates a prejudicial effect that outweighs ordinary relevance." *United States* v. *Moccia,* 681 F. 2d 61, 63 (CA1 1982). Justice Jackson described how the law has handled this risk:

> "Courts that follow the common-law tradition almost unanimously have come to disallow resort by the prosecution to any kind of evidence of a defendant's evil character to establish a probability of his guilt. Not that the law invests the defendant with a presumption of good character, *Greer* v. *United States,* 245 U. S. 559, but it simply closes the whole matter of character, disposition and reputation on the prosecution's case-in-chief. The state may not show defendant's prior trouble with the law, specific criminal acts, or ill name among his neighbors, even though such facts might logically be persuasive that he is by propensity a probable perpetrator of the crime. The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge. The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice." *Michelson* v. *United States,* 335 U. S. 469, 475–476 (1948) (footnotes omitted).

Rule of Evidence 404(b) reflects this common-law tradition by addressing propensity reasoning directly: "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Fed. Rule Evid. 404(b). There is, accordingly, no question that propensity would be an "improper basis" for conviction and that evidence of a prior conviction is subject to analysis under Rule 403 for relative probative value and for prejudicial risk of misuse as propensity evidence. Cf. 1 J. Strong, McCormick on Evidence 780 (4th ed. 1992) (hereinafter McCormick) (Rule 403 prejudice may occur, for example, when "evidence of convictions for prior, unrelated crimes may lead a juror to think that since the defendant already has a criminal record, an erroneous conviction would not be quite as serious as would otherwise be the case").

As for the analytical method to be used in Rule 403 balancing, two basic possibilities present themselves. An item of evidence might be viewed as an island, with estimates of its own probative value and unfairly prejudicial risk the sole reference points in deciding whether the danger substantially outweighs the value and whether the evidence ought to be excluded. Or the question of admissibility might be seen as inviting further comparisons to take account of the full evidentiary context of the case as the court understands it when the ruling must be made.[6] This second approach would start out like the first but be ready to go further. On objection, the court would decide whether a particular item of evidence raised a danger of unfair prejudice. If it did, the judge would go on to evaluate the degrees of probative value and unfair prejudice not only for the item in question but for any actually available substitutes as well. If an alternative were found to have substantially the same or greater probative value but a lower danger of unfair prejudice, sound judicial discretion would discount the value of the item first offered and exclude it if its discounted probative value were substantially outweighed by unfairly prejudicial risk. As we will explain later on, the judge would have to make these calculations with an appreciation of the offering party's need for evidentiary richness and narrative integrity in presenting a case, and the mere fact that two pieces of evidence might go to the same point would not, of course, necessarily mean that only one of them might come in. It would only mean that a judge applying Rule 403 could reasonably apply some discount to the probative value of an item of evidence when faced with less risky alternative proof going to the same point. Even under this second approach, as we explain below, a defendant's Rule 403 objection offering to concede a point generally cannot prevail over the Government's choice to offer evidence showing guilt and all the circumstances surrounding the offense. See *infra*, at 186–189.[7]

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[6] It is important that a reviewing court evaluate the trial court's decision from its perspective when it had to rule and not indulge in review by hindsight. See, for example, *United States* v. *O'Shea*, 724 F. 2d 1514, 1517 (CA11 1984), where the appellate court approved the trial court's pretrial refusal to impose a stipulation on the Government and exclude the Government's corresponding evidence of past convictions because the trial court had found at that stage that the evidence would quite likely come in anyway on other grounds.

The first understanding of the Rule is open to a very telling objection. That reading would leave the party offering evidence with the option to structure a trial in whatever way would produce the maximum unfair prejudice consistent with relevance. He could choose the available alternative carrying the greatest threat of improper influence, despite the availability of less prejudicial but equally probative evidence. The worst he would have to fear would be a ruling sustaining a Rule 403 objection, and if that occurred, he could simply fall back to offering substitute evidence. This would be a strange rule. It would be very odd for the law of evidence to recognize the danger of unfair prejudice only to confer such a degree of autonomy on the party subject to temptation, and the Rules of Evidence are not so odd.

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[7] While our discussion has been general because of the general wording of Rule 403, our holding is limited to cases involving proof of felon status. On appellate review of a Rule 403 decision, a defendant must establish abuse of discretion, a standard that is not satisfied by a mere showing of some alternative means of proof that the prosecution in its broad discretion chose not to rely upon.

Rather, a reading of the companions to Rule 403, and of the commentaries that went with them to Congress, makes it clear that what counts as the Rule 403 "probative value" of an item of evidence, as distinct from its Rule 401 "relevance," may be calculated by comparing evidentiary alternatives. The Committee Notes to Rule 401 explicitly say that a party's concession is pertinent to the court's discretion to exclude evidence on the point conceded. Such a concession, according to the Notes, will sometimes "call for the exclusion of evidence offered to prove [the] point conceded by the opponent . . . ." Advisory Committee's Notes on Fed. Rule Evid. 401, 28 U. S. C. App., p. 859. As already mentioned, the Notes make it clear that such rulings should be made not on the basis of Rule 401 relevance but on "such considerations as waste of time and undue prejudice (see Rule 403) . . . ." *Ibid.* The Notes to Rule 403 then take up the point by stating that when a court considers "whether to exclude on grounds of unfair prejudice," the "availability of other means of proof may . . . be an appropriate factor." Advisory Committee's Notes on Fed. Rule Evid. 403, 28 U. S. C. App., p. 860. The point gets a reprise in the Notes to Rule 404(b), dealing with admissibility when a given evidentiary item has the dual nature of legitimate evidence of an element and illegitimate evidence of character: "No mechanical solution is offered. The determination must be made whether the danger of undue prejudice outweighs the probative value of the evidence in view of the availability of other means of proof and other facts appropriate for making decision of this kind under 403." Advisory Committee's Notes on Fed. Rule Evid. 404, 28 U. S. C. App., p. 861. Thus the notes leave no question that when Rule 403 confers discretion by providing that evidence "may" be excluded, the discretionary judgment may be informed not only by assessing an evidentiary item's twin tendencies, but by placing the result of that assessment alongside similar assessments of evidentiary alternatives. See 1 McCormick 782, and n. 41 (suggesting that Rule 403's "probative value" signifies the "marginal probative value" of the evidence relative to the other evidence in the case); 22 C. Wright & K. Graham, Federal Practice and Procedure § 5250, pp. 546–547 (1978) ("The probative worth of any particular bit of evidence is obviously affected by the scarcity or abundance of other evidence on the same point").

2

In dealing with the specific problem raised by § 922(g)(1) and its prior-conviction element, there can be no question that evidence of the name or nature of the prior offense generally carries a risk of unfair prejudice to the defendant. That risk will vary from case to case, for the reasons already given, but will be substantial whenever the official record offered by the Government would be arresting enough to lure a juror into a sequence of bad character reasoning. Where a prior conviction was for a gun crime or one similar to other charges in a pending case the risk of unfair prejudice would be especially obvious, and Old Chief sensibly worried that the prejudicial effect of his prior assault conviction, significant enough with respect to the current gun charges alone, would take on added weight from the related assault charge against him.[8]

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[8] It is true that a prior offense may be so far removed in time or nature from the current gun charge and any others brought with it that its potential to prejudice the defendant unfairly will be minimal. Some prior offenses, in fact, may even have some potential to prejudice the Government's case unfairly. Thus an extremely old conviction for a relatively minor felony that nevertheless qualifies under the statute might strike many jurors as a foolish basis for convicting an otherwise upstanding member of the community of otherwise legal gun possession. Since the Government could not, of course, compel the defendant to admit formally the existence of the prior conviction, the Government would have to bear the risk of jury nullification, a fact that might properly drive the Government's charging decision.

The District Court was also presented with alternative, relevant, admissible evidence of the prior conviction by Old Chief's offer to stipulate, evidence necessarily subject to the District Court's consideration on the motion to exclude the record offered by the Government. Although Old Chief's formal offer to stipulate was, strictly, to enter a formal agreement with the Government to be given to the jury, even without the Government's acceptance his proposal amounted to an offer to admit that the prior-conviction element was satisfied, and a defendant's admission is, of course, good evidence. See Fed. Rule Evid. 801(d)(2)(A).

Old Chief's proffered admission would, in fact, have been not merely relevant but seemingly conclusive evidence of the element. The statutory language in which the prior-conviction requirement is couched shows no congressional concern with the specific name or nature of the prior offense beyond what is necessary to place it within the broad category of qualifying felonies, and Old Chief clearly meant to admit that his felony did qualify, by stipulating "that the Government has proven one of the essential elements of the offense." App. 7. As a consequence, although the name of the prior offense may have been technically relevant, it addressed no detail in the definition of the prior-conviction element that would not have been covered by the stipulation or admission. Logic, then, seems to side with Old Chief.

3

There is, however, one more question to be considered before deciding whether Old Chief's offer was to supply evidentiary value at least equivalent to what the Government's own evidence carried. In arguing that the stipulation or admission would not have carried equivalent value, the Government invokes the familiar, standard rule that the prosecution is entitled to prove its case by evidence of its own choice, or, more exactly, that a criminal defendant may not stipulate or admit his way out of the full evidentiary force of the case as the Government chooses to present it. The authority usually cited for this rule is *Parr* v. *United States,* 255 F. 2d 86 (CA5), cert. denied, 358 U. S. 824 (1958), in which the Fifth Circuit explained that the "reason for the rule is to permit a party 'to present to the jury a picture of the events relied upon. To substitute for such a picture a naked admission might have the effect to rob the evidence of much of its fair and legitimate weight.'" 255 F. 2d, at 88 (quoting *Dunning* v. *Maine Central R. Co.,* 91 Me. 87, 39 A. 352, 356 (1897)).

This is unquestionably true as a general matter. The "fair and legitimate weight" of conventional evidence showing individual thoughts and acts amounting to a crime reflects the fact that making a case with testimony and tangible things not only satisfies the formal definition of an offense, but tells a colorful story with descriptive richness. Unlike an abstract premise, whose force depends on going precisely to a particular step in a course of reasoning, a piece of evidence may address any number of separate elements, striking hard just because it shows so much at once; the account of a shooting that establishes capacity and causation may tell just as much about the triggerman's motive and intent. Evidence thus has force beyond any linear scheme of reasoning, and as its pieces come together a narrative gains momentum, with power not only to support conclusions but to sustain the willingness of jurors to draw the inferences, whatever they may be, necessary to reach an honest verdict. This persuasive power of the concrete and particular is often essential to the capacity of jurors to satisfy the obligations that the law places on them. Jury duty is usually unsought and sometimes resisted, and it may be as difficult for one juror suddenly to face the findings that can send another human being to prison, as it is for another to hold out conscientiously for acquittal. When a juror's duty does seem hard, the evidentiary account of what a defendant has thought and done can accomplish what no set of abstract statements ever could, not just to prove a fact but to establish its human significance, and so to implicate the law's moral underpinnings and a juror's obligation to sit in judgment. Thus, the prosecution may fairly seek to place its evidence before the jurors, as much to tell a story of guiltiness as to support an inference of guilt, to convince the jurors that a guilty verdict would be morally reasonable as much as to point to the discrete elements of a defendant's legal fault. Cf. *United States* v. *Gilliam*, 994 F. 2d 97, 100–102 (CA2), cert. denied, 510 U. S. 927 (1993).

But there is something even more to the prosecution's interest in resisting efforts to replace the evidence of its choice with admissions and stipulations, for beyond the power of conventional evidence to support allegations and give life to the moral underpinnings of law's claims, there lies the need for evidence in all its particularity to satisfy the jurors' expectations about what proper proof should be. Some such demands they bring with them to the courthouse, assuming, for example, that a charge of using a firearm to commit an offense will be proven by introducing a gun in evidence. A prosecutor who fails to produce one, or some good reason for his failure, has something to be concerned about. "If [jurors'] expectations are not satisfied, triers of fact may penalize the party who disappoints them by drawing a negative inference against that party." Saltzburg, A Special Aspect of Relevance: Countering Negative Inferences Associated with the Absence of Evidence, 66 Calif. L. Rev. 1011, 1019 (1978) (footnotes omitted).[9] Expectations may also arise in jurors' minds simply from the experience of a trial itself. The use of witnesses to describe a train of events naturally related can raise the prospect of learning about every ingredient of that natural sequence the same way. If suddenly the prosecution presents some occurrence in the series differently, as by announcing a stipulation or admission, the effect may be like saying, "never mind what's behind the door," and jurors may well wonder what they are being kept from knowing. A party seemingly responsible for cloaking something has reason for apprehension, and the prosecution with its burden of proof may prudently demur at a defense request to interrupt the flow of evidence telling the story in the usual way.

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[9] Cf. Green, "The Whole Truth?": How Rules of Evidence Make Lawyers Deceitful, 25 Loyola (LA) L. Rev. 699, 703 (1992) ("[E]videntiary rules . . . predicated in large measure on the law's distrust of juries [can] have the unintended, and perhaps ironic, result of encouraging the jury's distrust of lawyers. The rules do so by fostering the perception that lawyers are deliberately withholding evidence" (footnote omitted)). The fact that juries have expectations as to what evidence ought to be presented by a party, and may well hold the absence of that evidence against the party, is also recognized in the case law of the Fifth Amendment, which explicitly

In sum, the accepted rule that the prosecution is entitled to prove its case free from any defendant's option to stipulate the evidence away rests on good sense. A syllogism is not a story, and a naked proposition in a courtroom may be no match for the robust evidence that would be used to prove it. People who hear a story interrupted by gaps of abstraction may be puzzled at the missing chapters, and jurors asked to rest a momentous decision on the story's truth can feel put upon at being asked to take responsibility knowing that more could be said than they have heard. A convincing tale can be told with economy, but when economy becomes a break in the natural sequence of narrative evidence, an assurance that the missing link is really there is never more than second best.

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supposes that, despite the venerable history of the privilege against self-incrimination, jurors may not recall that someone accused of crime need not explain the evidence or avow innocence beyond making his plea. See, *e. g., Lakeside* v. *Oregon*, 435 U. S. 333, 340, and n. 10 (1978). The assumption that jurors may have contrary expectations and be moved to draw adverse inferences against the party who disappoints them undergirds the rule that a defendant can demand an instruction forbidding the jury to draw such an inference.

4

This recognition that the prosecution with its burden of persuasion needs evidentiary depth to tell a continuous story has, however, virtually no application when the point at issue is a defendant's legal status, dependent on some judgment rendered wholly independently of the concrete events of later criminal behavior charged against him. As in this case, the choice of evidence for such an element is usually not between eventful narrative and abstract proposition, but between propositions of slightly varying abstraction, either a record saying that conviction for some crime occurred at a certain time or a statement admitting the same thing without naming the particular offense. The issue of substituting one statement for the other normally arises only when the record of conviction would not be admissible for any purpose beyond proving status, so that excluding it would not deprive the prosecution of evidence with multiple utility; if, indeed, there were a justification for receiving evidence of the nature of prior acts on some issue other than status (*i. e.*, to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident," Fed. Rule Evid. 404(b)), Rule 404(b) guarantees the opportunity to seek its admission. Nor can it be argued that the events behind the prior conviction are proper nourishment for the jurors' sense of obligation to vindicate the public interest. The issue is not whether concrete details of the prior crime should come to the jurors' attention but whether the name or general character of that crime is to be disclosed. Congress, however, has made it plain that distinctions among generic felonies do not count for this purpose; the fact of the qualifying conviction is alone what matters under the statute. "A defendant falls within the category simply by virtue of past conviction for any [qualifying] crime ranging from possession of short lobsters, *see* 16 U. S. C. § 3372, to the most aggravated murder." *Tavares*, 21 F. 3d, at 4. The most the jury needs to know is that the conviction admitted by the defendant falls within the class of crimes that Congress thought should bar a convict from possessing a gun, and this point may be made readily in a defendant's admission and underscored in the court's jury instructions. Finally, the most obvious reason that the general presumption that the prosecution may choose its evidence is so remote from application here is that proof of the defendant's status goes to an element entirely outside the natural sequence of what the defendant is charged with thinking and doing to commit the current offense. Proving status without telling exactly why that status was imposed leaves no gap in the story of a defendant's subsequent criminality, and its demonstration by stipulation or admission neither displaces a chapter from a continuous sequence of conventional evidence nor comes across as an officious substitution, to confuse or offend or provoke reproach.

Given these peculiarities of the element of felony-convict status and of admissions and the like when used to prove it, there is no cognizable difference between the evidentiary significance of an admission and of the legitimately probative component of the official record the prosecution would prefer to place in evidence. For purposes of the Rule 403 weighing of the probative against the prejudicial, the functions of the competing evidence are distinguishable only by the risk inherent in the one and wholly absent from the other. In this case, as in any other in which the prior conviction is for an offense likely to support conviction on some improper ground, the only reasonable conclusion was that the risk of unfair prejudice did substantially outweigh the discounted probative value of the record of conviction, and it was an abuse of discretion to admit the record when an admission was available.[10] What we have said shows why this will be the general rule when proof of convict status is at issue, just as the prosecutor's choice will generally survive a Rule 403 analysis when a defendant seeks to force the substitution of an admission for evidence creating a coherent narrative of his thoughts and actions in perpetrating the offense for which he is being tried.

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[10] There may be yet other means of proof besides a formal admission on the record that, with a proper objection, will obligate a district court to exclude evidence of the name of the offense. A redacted record of conviction is the one most frequently mentioned. Any alternative will, of

The judgment is reversed, and the case is remanded to the Ninth Circuit for further proceedings consistent with this opinion.[11]

It is so ordered.

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS join, dissenting.

The Court today announces a rule that misapplies Federal Rule of Evidence 403 and upsets, without explanation, longstanding precedent regarding criminal prosecutions. I do not agree that the Government's introduction of evidence that reveals the name and basic nature of a defendant's prior felony conviction in a prosecution brought under 18 U. S. C. § 922(g)(1) "unfairly" prejudices the defendant within the meaning of Rule 403. Nor do I agree with the Court's newly minted rule that a defendant charged with violating

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course, require some jury instruction to explain it (just as it will require some discretion when the indictment is read). A redacted judgment in this case, for example, would presumably have revealed to the jury that Old Chief was previously convicted in federal court and sentenced to more than a year's imprisonment, but it would not have shown whether his previous conviction was for one of the business offenses that do not count, under § 921(a)(20). Hence, an instruction, with the defendant's consent, would be necessary to make clear that the redacted judgment was enough to satisfy the status element remaining in the case. The Government might, indeed, propose such a redacted judgment for the trial court to weigh against a defendant's offer to admit, as indeed the Government might do even if the defendant's admission had been received into evidence.

[11] In remanding, we imply no opinion on the possibility of harmless error, an issue not passed upon below.

§ 922(g)(1) can force the Government to accept his concession to the prior conviction element of that offense, thereby precluding the Government from offering evidence on this point. I therefore dissent.

I

Rule 403 provides that a district court may exclude relevant evidence if, among other things, "its probative value is substantially outweighed by the danger of unfair prejudice." Certainly, Rule 403 does not permit the court to exclude the Government's evidence simply because it may hurt the defendant. As a threshold matter, evidence is excludable only if it is "unfairly" prejudicial, in that it has "an undue tendency to suggest decision on an improper basis." Advisory Committee's Note on Fed. Rule Evid. 403, 28 U. S. C. App., p. 860; see, *e. g., United States* v. *Munoz,* 36 F. 3d 1229, 1233 (CA1 1994) ("The damage done to the defense is not a basis for exclusion; the question under Rule 403 is 'one of "unfair" prejudice—not of prejudice alone' ") (citations omitted), cert. denied *sub nom. Martinez* v. *United States,* 513 U. S. 1179 (1995); *Dollar* v. *Long Mfg., N. C., Inc.,* 561 F. 2d 613, 618 (CA5 1977) (" '[U]nfair prejudice' as used in Rule 403 is not to be equated with testimony simply adverse to the opposing party. Virtually all evidence is prejudicial or it isn't material. The prejudice must be 'unfair' "), cert. denied, 435 U. S. 996 (1978). The evidence tendered by the Government in this case—the order reflecting petitioner's prior conviction and sentence for assault resulting in serious bodily injury, in violation of 18 U. S. C. § 1153 and 18 U. S. C. § 113(f) (1988 ed.)—directly proved a necessary element of the § 922(g)(1) offense, that is, that petitioner had committed a crime covered by § 921(a)(20). Perhaps petitioner's case was damaged when the jury discovered that he previously had committed a felony and heard the name of his crime. But I cannot agree with the Court that it was *unfairly* prejudicial for the Government to establish an essential element of its case against petitioner with direct proof of his prior conviction.

The structure of § 922(g)(1) itself shows that Congress envisioned jurors' learning the name and basic nature of the defendant's prior offense. Congress enacted § 922(g)(1) to prohibit the possession of a firearm by any person convicted of "a crime punishable by imprisonment for a term exceeding one year." Section 922(g)(1) does not merely prohibit the possession of firearms by "felons," nor does it apply to all prior felony convictions. Rather, the statute excludes from § 922(g)(1)'s coverage certain business crimes and state misdemeanors punishable by imprisonment of two years or less. § 921(a)(20). Within the meaning of § 922(g)(1), then, "a crime" is not an abstract or metaphysical concept. Rather, the Government must prove that the defendant committed a *particular* crime. In short, under § 922(g)(1), a defendant's prior felony conviction connotes not only that he is a prior felon, but also that he has engaged in specific past criminal conduct.

Even more fundamentally, in our system of justice, a person is not simply convicted of "a crime" or "a felony." Rather, he is found guilty of a specified offense, almost always because he violated a specific statutory prohibition. For example, in the words of the order that the Government offered to prove petitioner's prior conviction in this case, petitioner "did knowingly and unlawfully assault Rory Dean Fenner, said assault resulting in serious bodily injury, in violation of Title 18 U. S. C. §§ 1153 and 113(f)." App. 18. That a variety of crimes would have satisfied the prior conviction element of the § 922(g)(1) offense does not detract from the fact that petitioner committed a specific offense. The name and basic nature of petitioner's crime are inseparable from the fact of his earlier conviction and were therefore admissible to prove petitioner's guilt.

The principle is illustrated by the evidence that was admitted at petitioner's trial to prove the other element of the

§ 922(g)(1) offense—possession of a "firearm." The Government submitted evidence showing that petitioner possessed a 9-mm. semiautomatic pistol. Although petitioner's possession of any number of weapons would have satisfied the requirements of § 922(g)(1), obviously the Government was entitled to prove with specific evidence that petitioner possessed the weapon he did. In the same vein, consider a murder case. Surely the Government can submit proof establishing the victim's identity, even though, strictly speaking, the jury has no "need" to know the victim's name, and even though the victim might be a particularly well loved public figure. The same logic should govern proof of the prior conviction element of the § 922(g)(1) offense. That is, the Government ought to be able to prove, with specific evidence, that petitioner committed a crime that came within § 922(g)(1)'s coverage.

The Court never explains precisely why it constitutes "unfair" prejudice for the Government to directly prove an essential element of the § 922(g)(1) offense with evidence that reveals the name or basic nature of the defendant's prior conviction. It simply notes that such evidence may lead a jury to conclude that the defendant has a propensity to commit crime, thereby raising the odds that the jury would find that he committed the crime with which he is currently charged. With a nod to the part of Rule 404(b) that says "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith," the Court writes:

> "There is, accordingly, no question that propensity would be an 'improper basis' for conviction and that evidence of a prior conviction is subject to analysis under Rule 403 for relative probative value and for prejudicial risk of misuse as propensity evidence." *Ante*, at 182.

A few pages later, it leaps to the conclusion that there can be "no question that evidence of the name or nature of the prior offense generally carries a risk of unfair prejudice to the defendant." *Ante,* at 185.

Yes, to be sure, Rule 404(b) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." But Rule 404(b) does not end there. It expressly contemplates the admission of evidence of prior crimes for other purposes, "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." The list is plainly not exhaustive, and where, as here, a prior conviction is an element of the charged offense, neither Rule 404(b) nor Rule 403 can bar its admission. The reason is simple: In a prosecution brought under § 922(g)(1), the Government does not submit evidence of a past crime to prove the defendant's bad character or to "show action in conformity therewith." It tenders the evidence as direct proof of a necessary element of the offense with which it has charged the defendant. To say, as the Court does, that it "unfairly" prejudices the defendant for the Government to establish its § 922(g)(1) case with evidence showing that, in fact, the defendant did commit a prior offense misreads the Rules of Evidence and defies common sense.

Any incremental harm resulting from proving the name or basic nature of the prior felony can be properly mitigated by limiting jury instructions. Federal Rule of Evidence 105 provides that when evidence is admissible for one purpose, but not another, "the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly." Indeed, on petitioner's own motion in this case, the District Court instructed the jury that it was not to " 'consider a prior conviction as evidence of guilt of the crime for which the defendant is now on trial.' " Brief for United States 32. The jury is presumed to have followed this cautionary instruction, see *Shannon* v. *United States,* 512 U. S. 573, 585 (1994), and the instruction offset whatever prejudice might have arisen from the introduction of petitioner's prior conviction.

II

The Court also holds that, if a defendant charged with violating § 922(g)(1) concedes his prior felony conviction, a district court abuses its discretion if it admits evidence of the defendant's prior crime that raises the risk of a verdict "tainted by improper considerations." See *ante*, at 174. Left unexplained is what, exactly, it was about the order introduced by the Government at trial that might cause a jury to decide the case improperly. The order offered into evidence (which the Court nowhere in its opinion sets out) stated, in relevant part:

> "And the defendant having been convicted on his plea of guilty of the offense charged in Count II of the indictment in the above-entitled cause, to-wit: That on or about the 18th day of December 1988, at Browning, in the State and District of Montana, and on and within the exterior boundaries of the Blackfeet Indian Reservation, being Indian country, JOHNNY LYNN OLD CHIEF, an Indian person, did knowingly and unlawfully assault Rory Dean Fenner, said assault resulting in serious bodily injury, in violation of Title 18 U. S. C. §§ 1153 and 113(f)." App. 18.

The order went on to say that petitioner was sentenced for a term of 60 months' imprisonment, to be followed by two years of supervised release.

Why, precisely, does the Court think that this item of evidence raises the risk of a verdict "tainted by improper considerations"? Is it because the jury might learn that petitioner assaulted someone and caused serious bodily injury? If this is what the Court means, would evidence that petitioner had committed some other felony be admissible, and if so, what sort of crime might that be? Or does the Court object to the order because it gave a few specifics about the assault, such as the date, the location, and the victim's name? Or perhaps the Court finds that introducing the order risks a verdict "tainted by improper considerations" simply because the § 922(g)(1) charge was joined with counts charging petitioner with using a firearm in relation to a crime of violence, in violation of 18 U. S. C. § 924(c), and with committing an assault with a dangerous weapon, in violation of 18 U. S. C. § 1153 and 18 U. S. C. § 113(c) (1988 ed.)? Under the Court's nebulous standard for admission of prior felony evidence in a § 922(g)(1) prosecution, these are open questions.

More troubling still is the Court's retreat from the fundamental principle that in a criminal prosecution the Government may prove its case as it sees fit. The Court reasons that, in general, a defendant may not stipulate away an element of a charged offense because, in the usual case, "the prosecution with its burden of persuasion needs evidentiary depth to tell a continuous story." *Ante,* at 190. The rule has, however, "virtually no application when the point at issue is a defendant's legal status, dependent on some judgment rendered wholly independently of the concrete events of later criminal behavior charged against him." *Ibid.* Thus, concludes the Court, there is no real difference between the "evidentiary significance" of a defendant's concession and that of the Government's proof of the prior felony with the order of conviction. *Ante,* at 191. Since the Government's method of proof was more prejudicial than petitioner's admission, it follows that the District Court should not have admitted the order reflecting his conviction when petitioner had conceded that element of the offense. *Ibid.*

On its own terms, the argument does not hold together. A jury is as likely to be puzzled by the "missing chapter" resulting from a defendant's stipulation to his prior felony conviction as it would be by the defendant's conceding any other element of the crime. The jury may wonder why it has not been told the name of the crime, or it may question why the defendant's firearm possession was illegal, given the tradition of lawful gun ownership in this country, see *Staples* v. *United States,* 511 U. S. 600, 610–612 (1994). "'Doubt as to the criminality of [the defendant's] conduct may influence the jury when it considers the possession element.'" *United States* v. *Barker,* 1 F. 3d 957, 960 (1993) (quoting *United States* v. *Collamore,* 868 F. 2d 24, 28 (CA1 1989)), modified, 20 F. 3d 365 (CA9 1994).

Second, the Court misapprehends why "it has never been seriously suggested that [a defendant] can . . . compel the Government to try the case by stipulation." *Singer* v. *United States,* 380 U. S. 24, 35 (1965). It may well be that the prosecution needs "evidentiary depth to tell a continuous story" in order to prove its case in a way a jury will accept. *Ante,* at 190. But that is by no means the only or the most important reason that a defendant may not oblige the Government to accept his concession to an element of the charged offense. The Constitution requires a criminal conviction to rest upon a jury determination that the defendant is guilty of every element of the crime of which he is charged beyond a reasonable doubt. *United States* v. *Gaudin,* 515 U. S. 506, 510 (1995) (citing *Sullivan* v. *Louisiana,* 508 U. S. 275, 277 (1993)); see also *Court of Ulster Cty.* v. *Allen,* 442 U. S. 140, 156 (1979) ("[I]n criminal cases, the ultimate test of any device's constitutional validity in a given case remains constant: the device must not undermine the factfinder's responsibility at trial, based on evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt"). "A simple plea of not guilty, Fed. Rule Crim. Proc. 11, puts the prosecution to its proof as to all elements of the crime charged . . . ." *Mathews* v. *United States,* 485 U. S. 58, 64–65 (1988). Further, a defendant's tactical decision not to contest an essential element of the crime does not remove the prosecution's burden to prove that element. *Estelle* v. *McGuire,* 502 U. S. 62, 69 (1991). At trial, a defendant may thus choose to contest the Government's proof on every element; or he may concede some elements and contest others;

or he may do nothing at all. Whatever his choice, the Government still carries the burden of proof beyond a reasonable doubt on *each* element.

It follows from these principles that a defendant's stipulation to an element of an offense does not remove that element from the jury's consideration. The usual instruction regarding stipulations in a criminal case reflects as much: "When the attorneys on both sides stipulate or agree as to the existence of a fact, you may accept the stipulation as evidence and regard that fact as proved. You are not required to do so, however, since you are the sole judge of the facts." 1 E. Devitt, C. Blackmar, M. Wolff, & K. O'Malley, Federal Jury Practice and Instructions § 12.03, p. 333 (4th ed. 1992). Obviously, we are not dealing with a stipulation here. A stipulation is an agreement, and no agreement was reached between petitioner and the Government in this case. Does the Court think a different rule applies when the defendant attempts to stipulate, over the Government's objection, to an element of the charged offense? If so, that runs counter to the Constitution: The Government must prove every element of the offense charged beyond a reasonable doubt, *In re Winship*, 397 U. S. 358, 361 (1970), and the defendant's strategic decision to "agree" that the Government need not prove an element cannot relieve the Government of its burden, see *Estelle*, *supra*, at 69–70. Because the Government bears the burden of proof on every element of a charged offense, it must be accorded substantial leeway to submit evidence of its choosing to prove its case.

Also overlooked by the Court is the fact that, in "conceding" that he has a prior felony conviction, a defendant may be trying to take the issue from the jury altogether by effectively entering a partial plea of guilty, something we have never before endorsed. Federal Rule of Criminal Procedure 23(a) does not permit a defendant to waive a jury trial unless the Government consents, and we have upheld the provision as constitutional. *Singer*, *supra*, at 37. "The Constitution recognizes an adversary system as the proper method of determining guilt, and the Government, as a litigant, has a legitimate interest in seeing that cases in which it believes a conviction is warranted are tried before the tribunal which the Constitution regards as most likely to produce a fair result." 380 U. S., at 36. A defendant who concedes the prior conviction element of the § 922(g)(1) offense may be effectively trying to waive his right to a jury trial on that element. Unless the Government agrees to this waiver, it runs afoul of Rule 23(a) and *Singer.*

III

The Court manufactures a new rule that, in a § 922(g)(1) case, a defendant can force the Government to accept his admission to the prior felony conviction element of the offense, thereby precluding the Government from offering evidence to directly prove a necessary element of its case. I cannot agree that it "unfairly" prejudices a defendant for the Government to prove his prior conviction with evidence that reveals the name or basic nature of his past crime. Like it or not, Congress chose to make a defendant's prior criminal conviction one of the two elements of the § 922(g)(1) offense. Moreover, crimes have names; a defendant is not convicted of some indeterminate, unspecified "crime." Nor do I think that Federal Rule of Evidence 403 can be read to obviate the well accepted principle, grounded in both the Constitution and in our precedent, that the Government may not be forced to accept a defendant's concession to an element of a charged offense as proof of that element. I respectfully dissent.

WALTERS *v.* METROPOLITAN EDUCATIONAL ENTERPRISES, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 95–259. Argued November 6, 1996—Decided January 14, 1997*

In 1990, petitioner Walters was fired by respondent Metropolitan Educational Enterprises, Inc., soon after she filed an employment discrimination charge against it under Title VII of the Civil Rights Act of 1964. Petitioner Equal Employment Opportunity Commission (EEOC) sued Metropolitan, alleging that the firing violated Title VII's antiretaliation provision. After Walters intervened, Metropolitan filed a motion to dismiss for lack of subject-matter jurisdiction, claiming that it was not an "employer" covered by Title VII because, at the time of the alleged retaliation, it was not "a person . . . who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year." 42 U. S. C. § 2000e(b). The parties have stipulated that Metropolitan failed to satisfy the 15-employee threshold in 1989; that, during most of 1990, it had between 15 and 17 employees on its payroll on each working day; and that, during 1990, there were only nine weeks in which it was actually compensating 15 or more employees on each working day. The District Court dismissed the case, relying on Circuit precedent to the effect that employees may be counted for § 2000e(b) purposes only on days on which they actually performed work or were being compensated despite their absence. The Seventh Circuit affirmed.

Held: The ultimate touchstone under § 2000e(b) is whether an employer has employment relationships with 15 or more individuals for each working day in 20 or more weeks during the year in question. Pp. 205–212.

(a) The "payroll method"—which looks to whether the employer has an employment relationship with the employee on the day in question, as is most readily demonstrated by the individual's appearance on the employer's payroll—represents the fair reading of the statutory language. That method embodies the ordinary, contemporary, common meaning of "has [an] employe[e]." While the phrase "for each working

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*Together with No. 95–779, *Equal Employment Opportunity Commission* v. *Metropolitan Educational Enterprises, Inc., et al.*, also on certiorari to the same court.

day" suggests the possibility of a test based on whether an employee is actually at work on a given day, such a test would be impossible to administer and reflects an improbable reading of the statute. The method advocated by Metropolitan, which focuses on whether an employer is compensating the employee on the day in question, is not a plausible reading of the statutory criterion of whether the employer "has" the employee. Pp. 206–208.

(b) The payroll approach does not render superfluous the statutory qualification "for each working day." Without this phrase, one would not be sure whether to count part-week employees toward the statutory minimum. Nor is it dispositive that the payroll method produces some strange consequences with regard to Title VII's coverage, since Metropolitan's approach produces unique peculiarities of its own. The latter approach would also turn the coverage determination into an incredibly complex and expensive factual inquiry, whereas, under the payroll method, all one needs to know about a given employee for a given year is whether he started or ended employment during that year and, if so, when. He is counted as an employee for each working day after arrival and before departure. Pp. 208–211.

(c) Under the payroll method, Metropolitan was an "employer" for purposes of petitioners' retaliatory-discharge claim. Pp. 211–212.

60 F. 3d 1225, reversed and remanded.

SCALIA, J., delivered the opinion for a unanimous Court.

Constantine John Gekas argued the cause for petitioner in No. 95–259. With him on the briefs was *Adrianne S. Harvitt*. *Deputy Solicitor General Waxman* argued the cause for petitioner in No. 95–779. On the briefs were *Solicitor General Days, Acting Solicitor General Dellinger, Assistant Attorney General Patrick, Deputy Solicitor General Bender, Beth S. Brinkmann, C. Gregory Stewart, Gwendolyn Young Reams, Carolyn L. Wheeler,* and *C. Gregory Stewart.*

Patrick J. Falahee, Jr., argued the cause and filed a brief for respondents in both cases.†

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†Briefs of *amici curiae* urging reversal were filed for the American Federation of Labor and Congress of Industrial Organizations by *Jonathan P. Hiatt, Marsha S. Berzon, Virginia A. Seitz,* and *Laurence Gold;* for the Lawyers' Committee for Civil Rights Under Law by *Lawrence J.*

JUSTICE SCALIA delivered the opinion of the Court.

Title VII of the Civil Rights Act of 1964 applies to any employer who "has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year." 78 Stat. 253, as amended, 42 U. S. C. § 2000e(b). These cases present the question whether an employer "has" an employee on any working day on which the employer maintains an employment relationship with the employee, or only on working days on which the employee is actually receiving compensation from the employer.

I

Petitioner Darlene Walters was employed by respondent Metropolitan Educational Enterprises, Inc., a retail distributor of encyclopedias, dictionaries, and other educational materials. In 1990, she filed a charge with the Equal Employment Opportunity Commission (EEOC), claiming that Metropolitan had discriminated against her on account of her sex in failing to promote her to the position of credit manager. Soon after that, Metropolitan fired her.

On April 7, 1993, petitioner EEOC filed suit against Metropolitan and its owner, respondent Leonard Bieber (hereinafter collectively Metropolitan), alleging that the firing constituted unlawful retaliation. Walters intervened in the suit. Metropolitan filed a motion to dismiss for lack of subject-matter jurisdiction, claiming that the company did not pass the 15-employee threshold for coverage under Title VII.

Latto, Herbert J. Hansell, Paul C. Saunders, Norman Redlich, Barbara R. Arnwine, Thomas J. Henderson, Richard T. Seymour, and *Teresa A. Ferrante;* and for the Women's Legal Defense Fund et al. by *Judith L. Lichtman, Donna R. Lenhoff,* and *Helen L. Norton.*

Donald J. McNeil and *Mona C. Zeiberg* filed a brief for the Illinois State Chamber of Commerce et al. as *amici curiae* urging affirmance.

Sharon L. Browne filed a brief for the Pacific Legal Foundation et al. as *amici curiae.*

The District Court granted Metropolitan's motion to dismiss, 864 F. Supp. 71 (ND Ill. 1994), relying on *Zimmerman* v. *North American Signal Co.*, 704 F. 2d 347, 354 (CA7 1983), which affirmed a District Court's decision to count employees toward the 15-employee threshold only on days on which they actually performed work or were being compensated despite their absence. On appeal from the District Court's judgment, the Court of Appeals reaffirmed *Zimmerman*. 60 F. 3d 1225 (CA7 1995). We granted certiorari. 516 U. S. 1171 (1996).

II

Petitioners' suit rests on Title VII's antiretaliation provision, 42 U. S. C. § 2000e–3(a), which makes it unlawful for an employer to discriminate against any of its employees for filing complaints of discrimination. Metropolitan was subject to Title VII, however, only if, at the time of the alleged retaliation, it met the statutory definition of "employer," to wit: "a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year." § 2000e(b).

Metropolitan's "working days" are Monday through Friday, and the "current" and "preceding" calendar years for purposes of the retaliatory-discharge claim are 1990 and 1989. The parties have stipulated that Metropolitan failed to satisfy the 15-employee threshold in 1989. During most of 1990, Metropolitan had between 15 and 17 employees on its payroll on each working day; but in only nine weeks of the year was it actually compensating 15 or more employees on each working day (including paid leave as compensation). The difference resulted from the fact that Metropolitan had two part-time hourly employees who ordinarily skipped one working day each week.*

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*Walters (but not the EEOC) alleged that, in addition to violating Title VII's antiretaliation provision, Metropolitan also violated the basic antidiscrimination provision, 42 U. S. C. § 2000e–2(a), by failing to promote her to

A

The parties agree that, on any particular day, all of the individuals with whom an employer has an employment relationship are "employees" of that employer. See 42 U. S. C. § 2000e(f) (defining "employee" to mean "an individual employed by an employer"). Thus, individuals who are not receiving compensation from their employer on the day in question nonetheless qualify as "employees" on that day for purposes of § 2000e(b)'s definition of "employer." Respondents contend, however, and the Seventh Circuit held here, that an employer "has" an employee for a particular working day within the meaning of § 2000e(b) only when he is actually compensating the individual on that day. This position has also been adopted by the Eighth Circuit. See *EEOC* v. *Garden & Associates, Ltd.*, 956 F. 2d 842, 843 (1992).

Petitioners contend that the test for when an employer "has" an employee is no different from the test for when an individual *is* an employee: whether the employer has an employment relationship with the individual on the day in question. This test is generally called the "payroll method," since the employment relationship is most readily demonstrated by the individual's appearance on the employer's payroll. The payroll method was approved in dictum by the Fifth Circuit in *Dumas* v. *Mount Vernon*, 612 F. 2d 974, 979, n. 7 (1980), and was adopted by the First Circuit in *Thurber* v. *Jack Reilly's, Inc.*, 717 F. 2d 633, 634–635 (1983), cert. denied, 466 U. S. 904 (1984); see also *Vera-Lozano* v. *International Broadcasting*, 50 F. 3d 67, 69–70 (CA1 1995) (re-

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credit manager in September 1989. In granting Metropolitan's motion to dismiss, the District Court stated that the relevant years for determining Metropolitan's status as an employer were 1989 and 1990. 864 F. Supp. 71, 72 (ND Ill. 1994). For purposes of Walters' *discrimination* claim, however, the relevant years were 1988 and 1989. Because Walters did not mention this issue in her petition for certiorari or her brief on the merits, we treat any objection to the District Court's disposition of the matter as waived.

affirming *Thurber*). The payroll method has also been adopted by the EEOC under the Age Discrimination in Employment Act of 1967, which defines "employer" in precisely the way Title VII does. See 29 U. S. C. § 630(b); Equal Employment Opportunity Commission Notice No. N–915–052, Policy Guidance: Whether Part-Time Employees Are Employees (Apr. 1990), reprinted in App. to Pet. for Cert. 30a–40a (hereinafter EEOC Policy Guidance). The Department of Labor has likewise adopted the payroll method under the Family and Medical Leave Act of 1993, which defines "employer" as a person who "employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year." See 29 U. S. C. § 2611(4)(A)(i); 29 CFR §§ 825.105(b)–(d) (1996). In its administration of Title VII, the EEOC has expressed a preference for the payroll method, see EEOC Policy Guidance, but it lacks rulemaking authority over the issue, see 42 U. S. C. § 2000e–12(a); *EEOC* v. *Arabian American Oil Co.*, 499 U. S. 244, 257 (1991).

We think that the payroll method represents the fair reading of the statutory language, which sets as the criterion the number of employees that the employer "has" for each working day. In the absence of an indication to the contrary, words in a statute are assumed to bear their "ordinary, contemporary, common meaning." *Pioneer Investment Services Co.* v. *Brunswick Associates Ltd. Partnership*, 507 U. S. 380, 388 (1993) (internal quotation marks and citation omitted). In common parlance, an employer "has" an employee if he maintains an employment relationship with that individual. See 1 The New Shorter Oxford English Dictionary 1198 (1993) (def. 2: defining "have" to mean to "[p]ossess in a certain relationship"); American Heritage Dictionary 828 (3d ed. 1992) (def. 2: defining "have" to mean "to occupy a particular relation to"; giving as an example "had a great many disciples"); Webster's New International Dictionary 1145 (2d ed. 1950) (def. 2: defining "have" to mean "[t]o possess, as something which appertains to, is connected with, or affects, one"; giving as an example "to have an ungrateful son").

Metropolitan contends that if one were asked how many employees he had *for a given working day,* he would give as the answer the number of employees who were actually performing work on that day. That is possibly so. Language is a subtle enough thing that the phrase "have an employee *for* a given *working* day" (as opposed to "have an employee on a given day") may be thought to convey the idea that the employee must actually be working on the day in question. But *no one* before us urges *that* interpretation of the language, which would count even salaried employees only on days that they are actually working. Such a disposition is so improbable and so impossible to administer (few employers keep daily attendance records of all their salaried employees) that Congress should be thought to have prescribed it only if the language could bear no other meaning. Metropolitan's own proposed test does not focus on the question, "How many employees did you have at work on a particular working day?" but rather the question, "How many employees were you *compensating* on that day?" That question, unlike the other one, simply cannot be derived from any possible reading of the text.

B

The Court of Appeals rejected the straightforward meaning of "has fifteen or more employees" in § 2000e(b) because of a different supposed consequence of the added statutory qualification "for each working day." In its view, if only the employment relationship were the intended focus, the statute would simply have required the employer to "ha[ve] fifteen or more employees . . . in each of twenty or more calendar weeks," without the further refinement "for each working day" of each of those weeks. This point would have some force (though it would still not produce the Court of Appeals' focus on the number of employees being *compen-*

sated on a particular day) if indeed the ordinary meaning of "has fifteen or more employees" rendered "for each working day" superfluous. Statutes must be interpreted, if possible, to give each word some operative effect. *United States* v. *Menasche,* 348 U. S. 528, 538–539 (1955). But we do not agree that giving "has fifteen or more employees" its ordinary meaning renders "for each working day" superfluous. Without that qualification, it would be unclear whether an employee who departed in the middle of a calendar week would count toward the 15-employee minimum for that week; with the qualification, it is clear that he does not. Similarly, the adjective "working" within the phrase "for each working day" eliminates any ambiguity about whether employees who depart after the end of the workweek, but before the end of the calendar week, count toward the 15-employee minimum for that week.

The Court of Appeals thought that the mere exclusion of part-week employees was an improbable purpose of the phrase. "[I]nstances where employees begin work on Wednesdays or depart on Thursdays," it said, "are unlikely to occur with sufficient frequency to merit inclusion in a federal anti-discrimination statute." 60 F. 3d, at 1228. But it is not a matter of carving out special treatment for this (supposedly minuscule) class—as would be the case if, without the phrase "for each working day," part-week employees would unquestionably be counted toward the statutory minimum. Without the phrase *one would not be sure* whether to count them or not, and in at least some cases the matter would have to be litigated. (Does a company have 15 employees "in" a week where, on all except the last workday, it has only 14? "In" a week where it hires a new employee on Saturday, a nonworkday, to begin on the next Monday? "In" a week where, in mid-week, one of 14 employees quits and is replaced by a different 14th employee?) We are decidedly of the view that the "mere" elimination of evident ambiguity is ample—indeed, admirable—justification for the inclusion of a statutory phrase; and that purpose alone is enough to "merit" enactment of the phrase at issue here. Moreover, the phenomenon of midweek commencement and termination of employment seems to us not as rare as the Court of Appeals believed. For many businesses payday, and hence hiring- and firing-day, is the end of the month rather than the end of the week. Metropolitan itself experienced 10 midweek arrivals or departures from its roughly 15-employee work force during 1990. Brief for Petitioner in No. 95–259, pp. 10–11.

Metropolitan points out that the interpretation we adopt produces some strange consequences with regard to the coverage of Title VII. For example, an employee who works irregular hours, perhaps only a few days a month, will be counted toward the 15-employee minimum for every week in the month. Metropolitan's approach reduces this problem (though it does not eliminate it entirely): The employee will be counted so long as he works one hour each day of the workweek. On the other hand, Metropolitan's approach produces unique peculiarities of its own: A company that has 15 employees working for it on each day of a 5-day workweek is covered, but if it decides to add Saturday to its workweek with only one less than its full complement of employees, it will become exempt from coverage (despite being in fact a "larger" business). Unsalaried employees who work the same number of hours per week are counted or not counted, depending on how their hours are scheduled. A half-time worker who works only mornings is counted; a half-time worker who works alternate days is not. The fact is that neither interpretation of the coverage provision can cause it to be an entirely accurate measure of the size of a business.

In any event, Metropolitan ought to be reluctant to appeal to practical consequences as the basis for deciding the question before us. The approach it suggests would turn the coverage determination into an incredibly complex and expensive factual inquiry. Applying it in the present cases required the parties to spend 10 months poring over Metropolitan's payroll registers, timecards, work diaries, and other timekeeping records to determine, for each working day of a 2-year period, how many employees were at work, how many were being paid on salaries, how many were on paid holiday leave, how many were on paid vacation leave, and how many were on paid sick leave. For an employer with 15 employees and a 5-day workweek, the number of daily working histories for the 2-year period is 7,800. The problems with Metropolitan's compensation-based approach are magnified when employees are "compensated" on days off in ways less clear cut than holiday, vacation, or sick leave. If, for example, employees accumulate seniority rights or entitlements to holiday bonuses on their unpaid days off, it would be necessary to determine (or litigate) whether they are "receiving compensation" on those days for purposes of the coverage determination. Under the interpretation we adopt, by contrast, all one needs to know about a given employee for a given year is whether the employee started or ended employment during that year and, if so, when. He is counted as an employee for each working day after arrival and before departure.

III

As we have described, in determining the existence of an employment relationship, petitioners look first and primarily to whether the individual in question appears on the employer's payroll. Metropolitan did not challenge this aspect of petitioners' approach; its objection was the more basic one that existence of an employment relationship was not the criterion. For their part, petitioners emphasize that what is ultimately critical under their method is the existence of an employment relationship, not appearance on the payroll; an individual who appears on the payroll but is not an "employee" under traditional principles of agency law, see, *e. g.*, *Nationwide Mut. Ins. Co.* v. *Darden*, 503 U. S. 318, 323–324 (1992), would not count toward the 15-employee minimum.

We agree with petitioners that the ultimate touchstone under § 2000e(b) is whether an employer has employment relationships with 15 or more individuals for each working day in 20 or more weeks during the year in question.

The parties' stipulation concerning the number of weeks in 1990 during which Metropolitan satisfied the 15-employee threshold using the payroll approach does not correspond precisely to the counting method petitioners have advocated here. The stipulation was arrived at by counting the number of employees on the payroll in each week of 1990, without regard to whether these employees were employed on each working day of the week. However, subtracting the nine weeks in which Metropolitan experienced midweek employment changes in 1990 from the 47 weeks of that year in which, according to the parties' stipulation, Metropolitan had employment relationships with 15 or more employees, leaves 38 weeks in which Metropolitan satisfied the 15-employee threshold under the interpretation we adopt. Therefore, Metropolitan was an "employer" within the meaning of § 2000e(b) for purposes of petitioners' retaliatory-discharge claim.

* * *

The judgment of the Court of Appeals is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

ATHERTON *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR CITY SAVINGS, F. S. B.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 95–928. Argued November 4, 1996—Decided January 14, 1997

After City Federal Savings Bank, a federally chartered, federally insured savings association, went into receivership, the Resolution Trust Corporation (RTC), which has since been replaced as receiver by respondent Federal Deposit Insurance Corporation (FDIC), brought this action in City Federal's name against several of its officers and directors, claiming that they had acted (or failed to act) in ways that led City Federal to make bad loans, and that these actions (or omissions) were unlawful because they amounted to gross negligence, simple negligence, and breaches of fiduciary duty. The defendants moved to dismiss under 12 U. S. C. § 1821(k), which states, in relevant part: "A director or officer of [a federally insured bank] may be held personally liable for monetary damages in any [RTC-initiated] civil action . . . for *gross negligence* [or] similar conduct . . . that demonstrates a greater disregard of a duty of care (than gross negligence) . . . . Nothing in this paragraph shall impair or affect *any* right of the [RTC] under other applicable law." (Emphasis added.) In dismissing all but the gross negligence claims, the District Court agreed with the defendants that, by authorizing actions for gross negligence or more seriously culpable conduct, the statute intended to forbid actions based upon less seriously culpable conduct, such as simple negligence. Reversing, the Third Circuit interpreted § 1821(k) as simply offering a safeguard against state legislation that had watered down applicable state standards of care—below a gross negligence benchmark. As so interpreted, the statute did not prohibit actions resting upon stricter standard of care rules—whether originating in state law (which the Circuit found applicable to state-chartered banks) or in federal common law (which the Circuit found applicable to federally chartered banks). Noting City Federal's federal charter, the Circuit concluded that the Government could pursue any claims for negligence or breach of fiduciary duty available as a matter of federal common law.

Held: State law sets the standard of conduct for officers and directors of federally insured savings institutions as long as the state standard (such as simple negligence) is stricter than that of § 1821(k). The federal statute nonetheless sets a "gross negligence" floor, which applies as a substitute for state standards that are more relaxed. Pp. 217–231.

(a) There is no federal common law that would create a general standard of care applicable to this case absent § 1821(k). The federal common-law corporate governance standard enunciated in cases such as *Briggs* v. *Spaulding,* 141 U. S. 132, applied to federally chartered banks, but does not survive this Court's later decision in *Erie R. Co.* v. *Tompkins,* 304 U. S. 64, 78. Normally, a federal court may fashion federal common-law rules only upon a specific showing that the use of state law will create a significant conflict with, or threat to, some federal policy or interest. See, *e. g., O'Melveny & Myers* v. *FDIC,* 512 U. S. 79, 87. The basic arguments that the FDIC implicitly or explicitly raises—(1) its invocation of the need for "uniformity" in fiduciary responsibility standards for federally chartered banks; (2) its suggestion that a federal common-law standard must be applied simply because the banks in question are federally chartered; (3) its analogy to the conflict of laws "internal affairs doctrine" to support its contention that courts should look to federal law to find the applicable standard of care; and (4) its reliance on federal Office of Thrift Supervision opinions applying the *Briggs* standard to federal savings bank directors and officers—do not point to a significant conflict with, or threat to, a federal interest that would be caused by the application of state-law standards of care. The Court notes that here, as in *O'Melveny,* the FDIC is acting only as a receiver of a failed institution; it is not pursuing the Government's interest as a bank insurer—an interest likely present whether the insured institution is state, or federally, chartered. The federal need here is far weaker than was present in the few and restricted instances in which this Court has created a federal common law. Thus, state law (except as modified by § 1821(k)) provides the applicable rules for decision. Pp. 217–226.

(b) Section 1821(k)'s "gross negligence" standard provides only a floor; it does not stand in the way of a stricter state-law standard making directors and officers liable for conduct, such as simple negligence, that is less culpable than gross negligence. For one thing, the statutory saving clause's language, read literally, preserves the applicability of stricter state standards when it says that "[n]othing [here]in . . . shall impair . . . *any* [RTC] right . . . under other applicable law." (Emphasis added.) For another, § 1821(k)'s background as a whole—its enactment at a time of failing savings associations, large federal payments to insured bank depositors, and recent state-law changes designed to limit pre-existing officer and director negligence liability—supports a reading of the statute as an effort to preserve the Government's ability to recover federal insurance funds by creating a standard of care floor. The legislative history, insofar as it is relevant, supports this conclusion. The petitioner's argument that § 1821(k) displaces federal common law by applying a uniform "gross negligence" standard for federally chartered, but not state-chartered, savings banks fails in light of the statute's language and history, this Court's conclusion that federal common law is inapplicable, and the fact that Congress did not separate its consideration of the two types of institutions. Pp. 226–231.

57 F. 3d 1231, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, KENNEDY, SOUTER, and GINSBURG, JJ., joined, and in which O'CONNOR, SCALIA, and THOMAS, JJ., joined, except to the extent the opinion relies on legislative history. O'CONNOR, J., filed an opinion concurring in part and concurring in the judgment, in which SCALIA and THOMAS, JJ., joined, *post*, p. 231.

Ronald W. Stevens argued the cause for petitioner. With him on the briefs were *Gilbert C. Miller* and *Bruce H. Nielson.*

Richard P. Bress argued the cause for respondent. With him on the brief were *Acting Solicitor General Dellinger, Deputy Solicitor General Bender, Jack D. Smith, Ann S. DuRoss,* and *Jerome A. Madden.**

JUSTICE BREYER delivered the opinion of the Court.

The Resolution Trust Corporation (RTC) sued several officers and directors of City Federal Savings Bank, claiming that they had violated the legal standard of care they owed that federally chartered, federally insured institution. The case here focuses upon the legal standard for determining whether or not their behavior was improper. It asks where courts should look to find the standard of care to measure the legal propriety of the defendants' conduct—to state law, to federal common law, or to a special federal statute (103 Stat. 243, 12 U. S. C. § 1821(k)) that speaks of "gross negligence"?

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*Briefs of *amici curiae* urging reversal were filed for the American Bankers Association et al. by *John J. Gill III, Michael F. Crotty, Richard M. Whiting,* and *Leonard J. Rubin;* for the Washington Legal Foundation et al. by *Reuben B. Robertson III, Daniel J. Popeo,* and *Paul D. Kamenar;* and for Joseph Iaria et al. by *Douglas S. Eakeley* and *Alan S. Naar.*

We conclude that state law sets the standard of conduct as long as the state standard (such as simple negligence) is stricter than that of the federal statute. The federal statute nonetheless sets a "gross negligence" floor, which applies as a substitute for state standards that are more relaxed.

I

In 1989, City Federal Savings Bank (City Federal), a federal savings association, went into receivership. The RTC, as receiver, brought this action in the bank's name against officers and directors. (Throughout this opinion, we use the more colloquial term "bank" to refer to a variety of institutions such as "federal savings associations.") The complaint said that the defendants had acted (or failed to act) in ways that led City Federal to make various bad development, construction, and business acquisition loans. It claimed that these actions (or omissions) were unlawful because they amounted to gross negligence, simple negligence, and breaches of fiduciary duty.

The defendants moved to dismiss. They pointed to a federal statute, 12 U. S. C. § 1821(k), that says in part that a "director or officer" of a federally insured bank "may be held personally liable for monetary damages" in an RTC-initiated "civil action . . . for *gross negligence*" or "similar conduct . . . that demonstrates a greater disregard of a duty of care (than gross negligence) . . . ." (Emphasis added.) They argued that, by authorizing actions for gross negligence or more seriously culpable conduct, the statute intended to forbid actions based upon less seriously culpable conduct, such as conduct that rose only to the level of simple negligence. The District Court agreed and dismissed all but the gross negligence claims.

The Third Circuit, providing an interlocutory appeal, 28 U. S. C. § 1292(b), reversed. It interpreted the federal statute as simply offering a safeguard against state legislation that had watered down applicable state standards of care—below a gross negligence benchmark. As so interpreted, the statute did not prohibit actions resting upon stricter standard of care rules—whether those stricter standard of care rules originated in state law (which the Circuit found applicable in the case of state-chartered banks) or in federal common law (which the Circuit found applicable in the case of federally chartered banks). *Resolution Trust Corp.* v. *Cityfed Financial Corp.*, 57 F. 3d 1231, 1243–1244, 1245–1249 (1995). Noting that City Federal is a federally chartered savings institution, the Circuit concluded that the RTC was free "to pursue any claims for negligence or breach of fiduciary duty available as a matter of federal common law." *Id.*, at 1249.

The defendants, pointing to variations in the Circuits' interpretations of the "gross negligence" statute, sought certiorari. Compare *Resolution Trust Corp.* v. *Frates*, 52 F. 3d 295 (CA10 1995) (§ 1821(k) prohibits federal common-law actions for simple negligence), with *Cityfed, supra,* at 1246–1249 (§ 1821(k) does not prohibit federal common-law actions for simple negligence). And we granted review.

II

We begin by temporarily setting the federal "gross negligence" statute to the side, and by asking whether, were there no such statute, federal common law would provide the applicable legal standard. We recognize, as did the Third Circuit, that this Court did once articulate federal common-law corporate governance standards, applicable to federally chartered banks. *Briggs* v. *Spaulding*, 141 U. S. 132 (1891). See also *Martin* v. *Webb*, 110 U. S. 7, 15 (1884) (directors must "use ordinary diligence . . . and . . . exercise reasonable control"); *Bowerman* v. *Hamner,* 250 U. S. 504 (1919). But the Court found its rules of decision in federal common law long before it held, in *Erie R. Co.* v. *Tompkins,* 304 U. S. 64 (1938), that "[t]here is no federal general common law." *Id.,* at 78. The Third Circuit, while considering itself bound by *Briggs,* asked whether relevant federal common-law standards could have survived *Erie.* We conclude that they did not and that (except as modified in Part III, *infra*) state law, not federal common law, provides the applicable rules for decision.

This Court has recently discussed what one might call "federal common law" in the strictest sense, *i. e.,* a rule of decision that amounts, not simply to an interpretation of a federal statute or a properly promulgated administrative rule, but, rather, to the judicial "creation" of a special federal rule of decision. See *Texas Industries, Inc.* v. *Radcliff Materials, Inc.,* 451 U. S. 630, 640–643 (1981). The Court has said that "cases in which judicial creation of a special federal rule would be justified . . . are . . . 'few and restricted.'" *O'Melveny & Myers* v. *FDIC,* 512 U. S. 79, 87 (1994) (quoting *Wheeldin* v. *Wheeler,* 373 U. S. 647, 651 (1963)). "Whether latent federal power should be exercised to displace state law is primarily a decision for Congress," not the federal courts. *Wallis* v. *Pan American Petroleum Corp.,* 384 U. S. 63, 68 (1966). Nor does the existence of related federal statutes automatically show that Congress intended courts to create federal common-law rules, for "'Congress acts . . . against the background of the total *corpus juris* of the states . . . .'" *Id.,* at 68 (quoting H. Hart & H. Wechsler, The Federal Courts and the Federal System 435 (1953)). Thus, normally, when courts decide to fashion rules of federal common law, "the guiding principle is that a significant conflict between some federal policy or interest and the use of state law . . . must first be specifically shown." 384 U. S., at 68. Indeed, such a "conflict" is normally a "precondition." *O'Melveny, supra,* at 87. See also *United States* v. *Kimbell*

Foods, Inc., 440 U. S. 715, 728 (1979); *Kamen* v. *Kemper Financial Services, Inc.*, 500 U. S. 90, 98 (1991).

No one doubts the power of Congress to legislate rules for deciding cases like the one before us. Indeed, Congress has enacted related legislation. Certain federal statutes specify, for example, how to form "national banks" (*i. e.*, a federally chartered bank), how to amend the articles of association, how shareholders are to vote, directors' qualifications, the form of a bank's "organization certificate," minimum capital requirements, and a list of corporate powers. See 12 U. S. C. § 21 *et seq.* Other federal statutes regulate the activities of federally chartered savings associations in various ways. *E. g.*, 12 U. S. C. § 1464(b) (various regulations on savings associations, such as interest rate on loans). No one argues, however, that either these statutes, or federal regulations validly promulgated pursuant to statute, set forth general corporate governance standards of the sort at issue applicable to a federally chartered *savings* association such as City Federal. Cf. 61 Fed. Reg. 4866 (1996) (to be codified in 12 CFR § 7.2000) (discussed *infra*, at 224) (describing governance procedures applicable to federally chartered national banks, but not federal savings associations). Consequently, we must decide whether the application of state-law standards of care to such banks would conflict with, and thereby significantly threaten, a federal policy or interest.

We have examined each of the basic arguments that the respondent implicitly or explicitly raises. In our view, they do not point to a conflict or threat that is significant, and we shall explain why. (The respondent, by the way, is now the Federal Deposit Insurance Corporation—the FDIC—which has replaced the RTC pursuant to a new federal statute. 12 U. S. C. § 1441a(b)(4)(A).)

First, the FDIC invokes the need for "uniformity." Federal common law, it says, will provide uniformity, but "[s]uperimposing *state* standards of fiduciary responsibility over standards developed by a *federal* chartering authority would

. . . 'upset the balance' that the federal chartering authority 'may strike . . . .'" Brief for Respondent 23 (quoting *Kamen, supra,* at 103). To invoke the concept of "uniformity," however, is not to prove its need. Cf. *Kimbell Foods, supra,* at 730 (rejecting "generalized pleas for uniformity"); *O'Melveny, supra,* at 88 (same).

For one thing, the number of federally insured banks is about equally divided between federally chartered and state-chartered banks, Federal Deposit Insurance Corporation, 1 Statistics on Banking: A Statistical History of the United States Banking Industry, p. B–9 (Aug. 1995) (Table SI–9) (showing that, in 1989, there were 1,595 federally chartered institutions and 1,492 state-chartered ones); and a federal standard that increases uniformity among the former would increase disparity with the latter.

For another, our Nation's banking system has thrived despite disparities in matters of corporate governance. Consider, for example, the divergent state-law governance standards applicable to banks chartered in different States, *e. g.,* Ind. Code §23–1–35–1(e)(2) (1994) (directors not liable unless conduct constitutes at least "willful misconduct or recklessness"); Iowa Code §524.605 (1995) (providing ordinary negligence standard), as well as the different ways in which lower courts since 1891 have interpreted *Briggs*' "federal common law" standard. Compare *Federal Deposit Insurance Corporation* v. *Mason,* 115 F. 2d 548, 551–552 (CA3 1940) (applying standard similar to simple negligence), with *Washington Bancorporation* v. *Said,* 812 F. Supp. 1256, 1266 (DC 1993) (*Briggs* did not apply "simple negligence" standard of care). See R. Stevens & B. Nielson, The Standard of Care for Directors and Officers of Federally Chartered Depository Institutions: It's Gross Negligence Regardless of Whether Section 1821(k) Preempts Federal Common Law, 13 Ann. Review Banking L. 169, 172 (1994) (in part because of "widely varying results, the federal common law standard of care is neither fully developed, nor well settled"). See also *infra,* at 223 (citing cases in which state governance law has been applied to national banks). Indeed, the Comptroller of the Currency, acting through regulation, permits considerable disparity in the standard of care applicable to federally chartered banks other than savings banks (which are under the jurisdiction of the Office of Thrift Supervision (OTS), 12 U. S. C. §§ 1462a, 1463(a)). See 61 Fed. Reg. 4866 (1996) (to be codified in 12 CFR § 7.2000) (permitting banks, within broad limits, "to follow the corporate governance procedures of the law of the state in which the main office of the bank is located . . . [or] the Delaware General Corporation Law . . . or the [Model Business Corporation Act]").

Second, the FDIC at times suggests that courts must apply a federal common-law standard of care simply because the banks in question are federally chartered. This argument, with little more, might have seemed a strong one during most of the first century of our Nation's history, for then state-chartered banks were the norm and federally chartered banks an exception—and federal banks often encountered hostility and deleterious state laws. See B. Klebaner, American Commercial Banking: *A History* 4–11 (1990) (tracing the origin of the dual banking system to the 1780 Philadelphia Bank and discussing proposals of a then-young Alexander Hamilton); B. Hammond, Banks and Politics in America: From the Revolution to the Civil War 41–66 (1957) (describing the controversial, but successful, Federalist proposals for the first and second federally chartered Bank of the United States).

After President Madison helped to create the second Bank of the United States, for example, many States enacted laws that taxed the federal bank in an effort to weaken it. This Court held those taxes unconstitutional. *McCulloch* v. *Maryland,* 4 Wheat. 316, 431 (1819) ("[T]he power to tax involves the power to destroy"). See also *Osborn* v. *Bank of United States,* 9 Wheat. 738 (1824) (federal marshals acted lawfully in seizing funds from a state tax collector who had hurdled the counter at the Chilicothe Branch of the Bank of the United States and taken $100,000 from the vault). Still, 10 years later President Andrew Jackson effectively killed the bank. His Secretary of the Treasury Roger Taney (later Chief Justice), believing state banks fully able to serve the Nation, took steps to "ushe[r] in the era of expansive state banking." A. Pollard, J. Passaic, K. Ellis, & J. Daly, Banking Law in the United States 16 (1988). See also *Briscoe* v. *Bank of Kentucky*, 11 Pet. 257 (1837) (permitting state banks to issue paper money in certain circumstances).

During and after the Civil War a federal banking system reemerged. Moved in part by war-related financing needs, Treasury Secretary (later Chief Justice) Salmon P. Chase proposed, and Congress enacted, laws providing for federally chartered banks, Act of Feb. 20, 1863, ch. 43, 12 Stat. 655, and encouraging state banks to obtain federal charters. Act of June 3, 1864, ch. 106, 13 Stat. 99 (only federally chartered banks can issue national currency). See also *Veazie* v. *Fenno*, 8 Wall. 533 (1869) (opinion of Chase, C. J.) (upholding constitutionality of federal taxation of state banks). Just before World War I, Congress created the federal reserve system. Act of Dec. 23, 1913, ch. 6, 38 Stat. 251. After that war, it created several federal banking agencies with regulatory authority over both federal and state banks. Act of June 16, 1933, ch. 89, 48 Stat. 162. And in 1933, it provided for the federal chartering of savings banks. Act of June 13, 1933, ch. 62, 48 Stat. 128.

This latter history is relevant because in 1870 and thereafter this Court held that federally chartered banks are subject to state law. See *National Bank* v. *Commonwealth*, 9 Wall. 353, 361 (1870). In *National Bank* the Court distinguished *McCulloch* by recalling that Maryland's taxes were "used . . . to destroy," and it added that federal banks

> "are subject to the laws of the State, and are governed in their daily course of business far more by the laws of the State than of the nation. All their contracts are

> governed and construed by State laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on State law. It is only when the State law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional." 9 Wall., at 362.

The Court subsequently found numerous state laws applicable to federally chartered banks. See, *e. g., Davis* v. *Elmira Savings Bank,* 161 U. S. 275, 290 (1896) ("Nothing, of course, in this opinion is intended to deny the operation of general and undiscriminating state laws on the contracts of national banks, so long as such laws do not conflict with the letter or the general objects and purposes of Congressional legislation"); *First Nat. Bank in St. Louis* v. *Missouri,* 263 U. S. 640, 656 (1924) (national banks "are subject to the laws of a State in respect of their affairs unless such laws interfere with the purposes of their creation, tend to impair or destroy their efficiency as federal agencies or conflict with the paramount law of the United States"); *Wichita Royalty Co.* v. *City Nat. Bank of Wichita Falls,* 306 U. S. 103 (1939) (applying state law to tort claim by depositor against directors of a national bank); *Anderson Nat. Bank* v. *Luckett,* 321 U. S. 233, 248 (1944) ("[N]ational banks are subject to state laws, unless those laws infringe the national banking laws or impose an undue burden on the performance of the banks' functions"); *California Fed. Sav. & Loan Assn.* v. *Guerra,* 479 U. S. 272 (1987) (applying state employment discrimination law to federally chartered savings and loan association).

For present purposes, the consequence is the following: To point to a federal charter by itself shows no conflict, threat, or need for "federal common law." It does not answer the critical question.

Third, the FDIC refers to a conflict of laws principle called the "internal affairs doctrine"—a doctrine that this Court has described as

> "a conflict of laws principle which recognizes that only one State should have the authority to regulate a corporation's internal affairs—matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders—because otherwise a corporation could be faced with conflicting demands." *Edgar* v. *MITE Corp.*, 457 U. S. 624, 645 (1982).

States normally look to the State of a business' incorporation for the law that provides the relevant corporate governance general standard of care. Restatement (Second) Conflict of Laws § 309 (1971). And by analogy, it has been argued, courts should look to federal law to find the standard of care governing officers and directors of federally chartered banks. See *Resolution Trust Corporation* v. *Chapman*, 29 F. 3d 1120, 1123–1124 (CA7 1994).

To find a justification for federal common law in this argument, however, is to substitute analogy or formal symmetry for the controlling legal requirement, namely, the existence of a need to create federal common law arising out of a significant conflict or threat to a federal interest. *O'Melveny*, 512 U. S., at 85, 87. The internal affairs doctrine shows no such need, for it seeks only to avoid conflict by requiring that there be a single point of legal reference. Nothing in that doctrine suggests that the single source of law must be federal. See *Chapman, supra*, at 1126–1127 (Posner, C. J., dissenting). In the absence of a governing federal common law, courts applying the internal affairs doctrine could find (we do not say that they will find) that the State closest analogically to the State of incorporation of an ordinary business is the State in which the federally chartered bank has its main office or maintains its principal place of business. Cf. 61 Fed. Reg. 4866 (1996) (to be codified in 12 CFR § 7.2000) (federally chartered commercial banks may "follow the corporate governance procedures of the law of the state in which the main office of the bank is located"). So to apply state law, as we have said, would tend to avoid disparity between federally chartered and state-chartered banks (that might be next door to each other). And, of course, if this approach proved problematic, Congress and federal agencies acting pursuant to congressionally delegated authority remain free to provide to the contrary.

Fourth, the FDIC points to statutes that provide the OTS, a federal regulatory agency, with authority to fine, or to remove from office, savings bank officers and directors for certain breaches of fiduciary duty. The FDIC adds that in "the course of such proceedings, the OTS, applying the ordinary-care standard [of *Briggs*,] . . . has spoken authoritatively respecting the duty of care owed by directors and officers to federal savings associations." Brief for Respondent 23–25 (citations omitted). The FDIC does not claim, however, that these OTS statements, interpreting a pre-existing judge-made federal common-law standard (*i. e.*, that of *Briggs*) themselves amounted to an agency effort to promulgate a binding regulation pursuant to delegated congressional authority. Nor have we found, in our examination of the relevant OTS opinions, any convincing evidence of a relevant, significant conflict or threat to a federal interest.

Finally, we note that here, as in *O'Melveny*, the FDIC is acting only as a receiver of a failed institution; it is not pursuing the interest of the Federal Government as a bank insurer—an interest likely present whether the insured institution is state, or federally, chartered.

In sum, we can find no significant conflict with, or threat to, a federal interest. The federal need is far weaker than was present in what the Court has called the " 'few and restricted' instances," *Milwaukee* v. *Illinois*, 451 U. S. 304, 313 (1981), in which this Court has created a federal common law. Consider, for example, *Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U. S. 92 (1938) (controversy between two States regarding apportionment of streamwater); *Boyle* v. *United Technologies Corp.*, 487 U. S. 500 (1988)

(Federal Government contractors and civil liability of federal officials); *United States* v. *Standard Oil Co. of Cal.*, 332 U. S. 301, 305 (1947) (relationship between Federal Government and members of its Armed Forces); *Howard* v. *Lyons*, 360 U. S. 593, 597 (1959) (liability of federal officers in the course of official duty); *Banco Nacional de Cuba* v. *Sabbatino*, 376 U. S. 398, 425 (1964) (relationships with other countries). See also *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*, 451 U. S. 630, 641 (1981) ("[A]bsent some congressional authorization to formulate substantive rules of decision, federal common law exists only in such narrow areas as those concerned with the rights and obligations of the United States, interstate and international disputes implicating the conflicting rights of States or our relations with foreign nations, and admiralty cases"). Indeed, the interests in many of the cases where this Court has declined to recognize federal common law appear at least as strong as, if not stronger than, those present here. *E. g.*, *Wallis* v. *Pan American Petroleum Corp.*, 384 U. S. 63 (1966) (applying state law to claims for land owned and leased by the Federal Government); *Kimbell Foods*, 440 U. S., at 726, 732–738 (applying state law to priority of liens under federal lending programs).

We conclude that the federal common-law standards enunciated in cases such as *Briggs* did not survive this Court's later decision in *Erie* v. *Tompkins*. There is no federal common law that would create a general standard of care applicable to this case.

III

We now turn to a further question: Does federal *statutory* law (namely, the federal "gross negligence" statute) supplant any state-law standard of care? The relevant parts of that statute read as follows:

> "*A director or officer* of an insured depository institution *may be held personally liable for* monetary damages in any civil action by, on behalf of, or at the request or

> direction of the Corporation . . . acting as conservator or receiver . . . for *gross negligence, including* any similar conduct or conduct that demonstrates *a greater disregard of a duty of care* (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law. *Nothing in this paragraph shall impair or affect any right of the Corporation under other applicable law.*" 12 U. S. C. § 1821(k) (emphasis added).

Lower courts have taken different positions about whether this statute, in stating that directors and officers "may be held personally liable" for conduct that amounts to "gross negligence" or worse, immunizes them from liability for conduct that is less culpable than gross negligence such as simple negligence. *Federal Deposit Insurance Corporation* v. *McSweeney*, 976 F. 2d 532, 537, n. 5 (CA9 1992), cert. denied, 508 U. S. 950 (1993); *Federal Deposit Insurance Corporation* v. *Canfield*, 967 F. 2d 443, 446, n. 3 (CA10) (en banc), cert. dism'd, 506 U. S. 993 (1992); *Federal Deposit Insurance Corporation* v. *Swager*, 773 F. Supp. 1244 (Minn. 1991). See also Pet. for Cert. i ("The questions presented for review are: 1. Whether Section 1821(k) supplants 'federal common law' and constitutes the exclusive standard of liability in a civil damage action brought by the Resolution Trust Corporation . . ."); Brief for American Bankers Association et al. as *Amici Curiae* 7–8.

In our view, the statute's "gross negligence" standard provides only a floor—a guarantee that officers and directors must meet at least a gross negligence standard. It does not stand in the way of a stricter standard that the laws of some States provide.

For one thing, the language of the statute contains a saving clause that, read literally, preserves the applicability of stricter state standards. It says "[n]othing in this paragraph shall impair or affect *any* right of the Corporation under other applicable law." 12 U. S. C. § 1821(k) (emphasis added). The petitioner, in contending that the statute displaces federal common law, says that "any right" means only a right created elsewhere in the same Act of Congress, for example, by various regulatory enforcement provisions. *E. g.*, § 1818(b) (cease-and-desist provision). But that is not what the Act says nor does its language compel so restrictive a reading. That language, read naturally, suggests an interpretation broad enough to save rights provided by other state, or federal, law.

For another thing, Congress enacted the statute against a background of failing savings associations, see 135 Cong. Rec. 121 (1989) (statement of Rep. Roth); 135 Cong. Rec. 1760 (1989) (statement of Sen. Graham), large federal payments to insured bank depositors, and recent changes in state law designed to limit pre-existing officer and director negligence liability. See, *e. g.*, Fla. Stat. § 607.0831 (1993) ("recklessness or an act or omission . . . committed in bad faith or with malicious purpose"); Ohio Rev. Code Ann. § 1701.59(D) (1994) ("deliberate intent to cause injury to the corporation or undertaken with reckless disregard for the best interests of the corporation"). The state-law changes would have made it more difficult for the Federal Government to recover, from negligent officers and directors, federal funds spent to rescue failing savings banks and their depositors. And the background as a whole supports a reading of the statute as an effort to preserve the Federal Government's ability to recover funds by creating a standard of care floor.

The legislative history, insofar as it is relevant, supports this conclusion. Members of Congress repeatedly referred to the harm that liability-relaxing changes in state law had caused the Federal Government, hence the taxpayer, as federal banking agencies tried to recover, from negligent officers and directors, some of the money that federal insurers had to pay to depositors in their failed banks. *E. g.*, 135 Cong. Rec. 7150–7151 (1989) (statement of Sen. Riegle) ("[T]he establishment of a Federal standard of care is based on the overriding Federal interest in protecting the soundness of the Federal Deposit Insurance Corporation fund and is very limited in scope. It is not a wholesale preemption of longstanding principles of corporate governance . . ."). To have pre-empted state law with a uniform federal "gross negligence" standard would have cured the problem in some instances (where state law was weaker) but would have aggravated it in others (where state law was stronger).

In fact, the legislative history says more. The relevant Senate Report addresses the point specifically. It says:

> "This subsection does not prevent the FDIC from pursuing claims under State law or under other applicable Federal law, if such law permits the officers or directors of a financial institution to be sued (1) for violating a lower standard of care, such as simple negligence." S. Rep. No. 101–19, p. 318 (1989).

This Report was not published until two weeks after Congress enacted the law. But, as petitioner elsewhere concedes, the Report was circulated within Congress several weeks before Congress voted. In fact Senator Riegle, the Banking Committee Chairman, read the statement, on his own behalf and that of Senator Garn, six weeks before Congress voted on the law. 135 Cong. Rec. 12374 (1989). Contrast *Clarke* v. *Securities Industry Assn.*, 479 U. S. 388, 407 (1987) (refusing to "attach substantial weight" to a Representative's statement *made* 10 days after the enactment of the law).

The history is not all on one side. The Congressional Record contains one statement that suggests a competing congressional purpose, namely, to protect bank officers and directors from too strict a liability standard. 135 Cong. Rec. 7150 (1989) (statement of Sen. Sanford) (supporting "provisions relating to State laws affecting the liability of officers and directors of financial institutions" because "these changes are essential if we are to attract qualified officers and directors to serve in our financial institutions"). But we have not found other such statements. And that statement is inconsistent with the language of the Senate Report. It suggests an interpretation of the statute largely rejected in the lower courts, namely, that it pre-empts stricter state law as applied to state-chartered, as well as to federally chartered, institutions. See, *e. g.*, *McSweeney*, 976 F. 2d, at 540–541 (rejecting the interpretation as applied to state-chartered banks); *Canfield*, 967 F. 2d, at 448–449 (same).

The petitioner, in the courts below and as an alternative ground in this Court, made a final complicated argument to explain why 12 U. S. C. § 1821(k) displaces federal common law. He points to the universally conceded fact that the "gross negligence" statute applies to federal, as well as to state, banks. He then assumes, for sake of the argument, that in the absence of the statute, federal common law would determine liability for federal banks. He then asks why Congress would have applied the "gross negligence" statute to federal banks unless it wanted that statute to set an absolute standard, not a floor. After all, on the assumption that, without the statute, federal common law would hold federal directors and officers to a standard as strict, or stricter, there would have been no need for the statute unless (as applied to federal banks) it intended to set a universal standard, freeing officers and directors from the potentially less strict standard of the common law, and not what, given the assumptions, would be a totally unnecessary floor. This argument, taken to its logical conclusion, would also suggest that state standards of simple negligence would be displaced by the federal gross negligence statute.

One obvious short answer to this ingenious argument lies in the fact that our conclusion in Part II runs contrary to the argument's critical assumption, namely, that federal common law sets the standard of liability applicable to federal banks. State law applies. Without that assumption, the need for a "gross negligence" floor in the case of federally chartered banks is identical to the need in the case of state-chartered banks. In both instances, the floor is needed to limit state efforts to weaken liability standards; in both instances a floor serves that purpose; and the reasons for believing the statute only sets such a floor are equally strong.

A more thorough answer lies in the fact that Congress nowhere separated its consideration of federally chartered, from that of state-chartered, banks. Congress did not ask whether one looked to federal common law or to state law to find the liability standard applicable to federally chartered banks. Nor did it try to determine the content of federal common law. One can reconcile congressional silence on the matter with a "gross negligence" statute, the language of which brings all banks (federal- and state-chartered) within its scope, simply by assuming that Congress, when enacting the statute, wanted to leave other law, including the law applicable to federally chartered banks, exactly where Congress found it. That, after all, is what the statute says. And the saving clause language taken at face value permits Congress to achieve its basic objective (providing a "gross negligence" floor) without having to unravel the arcane intricacies of federal common law. In our view, this understanding of congressional intent better explains the statute's language and history than the petitioner's interpretation, imputing to Congress an intent to apply a uniform "gross negligence" standard to federally chartered, but not state chartered, institutions.

For these reasons, the judgment of the Court of Appeals is vacated, and the case is remanded for proceedings consistent with this opinion.

It is so ordered.

JUSTICE O'CONNOR, with whom JUSTICE SCALIA and JUSTICE THOMAS join, concurring in part and concurring in the judgment.

I join all of the Court's opinion, except to the extent that it relies on the notably unhelpful legislative history to 12 U. S. C. § 1821(k). *Ante,* at 228–230. As the Court correctly points out, the most natural reading of the saving clause in § 1821(k) covers both state and federal rights. *Ante*, at 228. With such plain statutory language in hand, there is no reason to rely on legislative history that is, as the majority recognizes, "not all on one side." *Ante*, at 229.

GRIMMETT, TRUSTEE FOR THE BANKRUPTCY ESTATE OF SIRAGUSA, ET AL. *v.* BROWN ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPPEALS FOR THE NINTH CIRCUIT

No. 95–1723. Argued January 6, 1997—Decided January 14, 1997

Certiorari dismissed. Reported below: 75 F. 3d 506.

Richard A. Sauber argued the cause for petitioners. With him on the briefs were *Michael L. Waldman, David B. Smith, Erven T. Nelson,* and *Randall M. Rumph.*

Philip A. Lacovara argued the cause for respondents. On the brief for respondents Beckley et al. were *Niels L. Pearson, Rex A. Jemison,* and *Daniel F. Polsenberg.* On the brief for respondents Brown et al. were *Peter M. Angulo* and *Don F. Shreve, Jr.**

PER CURIAM.

The writ of certiorari in this case is dismissed as improvidently granted.

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*Briefs of *amici curiae* urging reversal were filed for the Executive Committee, MDL No. 1069, et al. by *Richard B. McNamara, Gregory A. Holmes, Stephanie A. Bray, Michael M. Baylson, Martin J. Oberman, Alice W. Ballard, Charles Barnhill, Jr., Judson Miner,* and *Edward R. Garvey;* and for the National Association of Securities and Commercial Law Attorneys by *Kevin P. Roddy, G. Robert Blakey,* and *Jonathan W. Cuneo.*

Michael A. Cardozo and *Steven C. Krane* filed a brief for the National Hockey League as *amicus curiae* urging affirmance.

Andrew L. Frey, Philip A. Lacovara, and *Evan M. Tager* filed a brief for the American Honda Motor Co. as *amicus curiae.*

BABBITT, SECRETARY OF THE INTERIOR, ET AL. *v.* YOUPEE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 95–1595. Argued December 2, 1996—Decided January 21, 1997

In the late Nineteenth Century, Congress initiated an Indian land program that authorized the allotment of communal Indian property to individual tribal members. This allotment program resulted in the extreme fractionation of Indian lands as allottees passed their undivided interests on to multiple heirs through descent or devise. In 1983, Congress adopted the Indian Land Consolidation Act in part to reduce fractionated ownership of allotted lands. Section 207 of the Act—the "escheat" provision—prohibited the descent or devise of fractional interests that constituted 2 percent or less of the total acreage in an allotted tract and earned less than $100 in the preceding year. Instead of passing to heirs, the interests described in § 207 would escheat to the tribe, thereby consolidating the ownership of Indian lands. Section 207 made no provision for the payment of compensation to those who held such fractional interests. In *Hodel* v. *Irving,* 481 U. S. 704, this Court invalidated the original version of § 207 on the ground that it effected a taking of private property without just compensation, in violation of the Fifth Amendment. *Id.*, at 716–718. Considering, first, the economic impact of § 207, the Court observed that the provision's income-generation test might fail to capture the actual economic value of the land. *Id.*, at 714. Weighing most heavily against the constitutionality of § 207, however, was the "extraordinary" character of the Government regulation, *id.*, at 716, which amounted to the virtual abrogation of the rights of descent and devise, *id.*, at 716–717. While *Irving* was pending in the Court of Appeals, Congress amended § 207. Amended § 207 differs from the original provision in three relevant respects: It looks back five years instead of one to determine the income produced from a small interest, and creates a rebuttable presumption that this income stream will continue; it permits devise of otherwise escheatable interests to persons who already own an interest in the same parcel; and it authorizes tribes to develop their own codes governing the disposition of fractional interests. The will of William Youpee, an enrolled member of the Sioux and Assiniboine Tribes, devised to respondents, all of them enrolled tribal members, his several undivided interests in allotted lands on reservations in Montana and North Dakota. Each interest was devised to a single descendant. Youpee's will thus perpetuated existing fractionation, but it did not splinter ownership further by bequeathing any single fractional interest to multiple devisees. In a proceeding to determine claims against and heirs to Youpee's estate, an Administrative Law Judge in the Department of the Interior found that interests devised to each of the respondents fell within the compass of amended § 207 and should therefore escheat to the relevant tribal governments. Respondents, asserting the unconstitutionality of amended § 207, appealed the order to the Board of Indian Appeals. The Board, stating that it did not have jurisdiction to consider respondents' constitutional claim, dismissed the appeal. Respondents then filed this suit against the Secretary of the Interior, alleging that amended § 207 violates the Just Compensation Clause of the Fifth Amendment. The District Court agreed with respondents and granted their request for declaratory and injunctive relief. The Ninth Circuit affirmed.

Held: Amended § 207 does not cure the constitutional deficiency this Court identified in the original version of § 207. The Court is guided by *Irving* in determining whether the amendments to § 207 render the provision constitutional. The United States maintains that the amendments moderate the economic impact of the provision and temper the character of the Government's regulation. However, the narrow revisions Congress made to § 207, without benefit of this Court's ruling in *Irving*, do not warrant a disposition different from the one announced and explained in *Irving*. Amended § 207 permits a five-year window rather than a one-year window to assess the income-generating capacity of a fractional interest, and the United States urges that this alteration substantially mitigates the economic impact of § 207. But amended § 207 still trains on income generated from the land, not on the value of the parcel. Even if the income generated by such parcels may be typed *de minimis*, the value of the land may not fit that description. 481 U. S., at 714. The United States correctly comprehends that *Irving* rested primarily on the "extraordinary" character of the governmental regulation: the "virtua[l] abrogation" of the right of descent and devise, *id.*, at 716. The United States contends, however, that Congress cured the fatal infirmity in § 207 when it revised the section to allow transmission of fractional interests to successors who already own an interest in the allotment. But this change does not rehabilitate the measure. Amended § 207 severely restricts the right of an individual to direct the descent of his property by shrinking drastically the universe of possible successors. And, as the Ninth Circuit observed, the "very limited group [of permissible devisees] is unlikely to contain any lineal descendants." 67 F. 3d 194, 199–200. Moreover, amended § 207 continues to restrict devise "even in circumstances when the governmental purpose sought to be advanced, consolidation of ownership of Indian lands, does not conflict with the further descent of the property." 481 U. S., at 718. As the United States acknowledges, giving effect to Youpee's directive bequeathing each fractional interest to one heir would not further fractionate Indian land holdings. The United States' arguments that amended § 207 satisfies the Constitution's demand because it does not diminish the owner's right to use or enjoy property during his lifetime and does not affect the right to transfer property at death through nonprobate means are no more persuasive today than they were in *Irving.* See *id.*, at 716–718. The third alteration made in amended § 207 also fails to bring the provision outside the reach of this Court's holding in *Irving:* Tribal codes governing disposition of escheatable interests have apparently not been developed. Pp. 243–245.

67 F. 3d 194, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, *post,* p. 246.

James A. Feldman argued the cause for petitioners. With him on the briefs were *Acting Solicitor General Dellinger, Assistant Attorney General Schiffer, Deputy Solicitor General Kneedler, Anne S. Almy, Robert L. Klarquist,* and *Andrew C. Mergen.*

Rene A. Martell argued the cause for respondents. With him on the brief were *Daniel L. Minnis* and *D. Michael Eakin.**

JUSTICE GINSBURG delivered the opinion of the Court.

In this case, we consider for a second time the constitutionality of an escheat-to-tribe provision of the Indian Land Consolidation Act (ILCA). 96 Stat. 2519, as amended, 25 U. S. C. § 2206. Specifically, we address § 207 of the ILCA, as amended in 1984. Congress enacted the original provision in 1983 to ameliorate the extreme fractionation problem attending a century-old allotment policy that yielded multiple ownership of single parcels of Indian land. Pub. L. 97–459, § 207, 96 Stat. 2519. Amended § 207 provides that certain small interests in Indian lands will transfer—or "escheat"—to the tribe upon the death of the owner of the interest. Pub. L. 98–608, 98 Stat. 3173. In *Hodel* v. *Irving,* 481 U. S. 704 (1987), this Court held that the original version of § 207 of the ILCA effected a taking of private property without just compensation, in violation of the Fifth Amendment to the United States Constitution. *Id.,* at 716–718. We now hold that amended § 207 does not cure the constitutional deficiency this Court identified in the original version of § 207.

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*Briefs of *amici curiae* urging affirmance were filed for the Allottees Association and Affiliated Tribes and Bands of the Quinault Reservation et al. by *Joel Jasperse* and *Thomas E. Luebben;* and for the Pacific Legal Foundation by *James S. Burling.*

I

In the late Nineteenth Century, Congress initiated an Indian land program that authorized the division of communal Indian property. Pursuant to this allotment policy, some Indian land was parcelled out to individual tribal members. Lands not allotted to individual Indians were opened to non-Indians for settlement. See Indian General Allotment Act of 1887, ch. 119, 24 Stat. 388. Allotted lands were held in trust by the United States or owned by the allottee subject to restrictions on alienation. On the death of the allottee, the land descended according to the laws of the State or Territory in which the land was located. 24 Stat. 389. In 1910, Congress also provided that allottees could devise their interests in allotted land. Act of June 25, 1910, ch. 431, § 2, 36 Stat. 856, codified as amended, 25 U. S. C. § 373.

The allotment policy "quickly proved disastrous for the Indians." *Irving,* 481 U. S., at 707. The program produced a dramatic decline in the amount of land in Indian hands. F. Cohen, Handbook of Federal Indian Law 138 (1982) (hereinafter Cohen). And as allottees passed their interests on to multiple heirs, ownership of allotments became increasingly fractionated, with some parcels held by dozens of owners.

Lawson, Heirship: The Indian Amoeba, reprinted in Hearing on S. 2480 and S. 2663 before the Senate Select Committee on Indian Affairs, 98th Cong., 2d Sess., 77 (1984) (hereinafter Lawson). A number of factors augmented the problem: Because Indians often died without wills, many interests passed to multiple heirs, H. R. Rep. No. 97–908, p. 10 (1982); Congress' allotment Acts subjected trust lands to alienation restrictions that impeded holders of small interests from transferring those interests, Lawson 78–79; Indian lands were not subject to state real estate taxes, Cohen 406, which ordinarily serve as a strong disincentive to retaining small fractional interests in land. The fractionation problem proliferated with each succeeding generation as multiple heirs took undivided interests in allotments.

The administrative difficulties and economic inefficiencies associated with multiple undivided ownership in allotted lands gained official attention as early as 1928. See L. Meriam, Institute for Government Research, The Problem of Indian Administration 40–41 (1928). Governmental administration of these fractionated interests proved costly, and individual owners of small undivided interests could not make productive use of the land. Congress ended further allotment in 1934. See Indian Reorganization Act, ch. 576, 48 Stat. 984, 25 U. S. C. § 461 *et seq.* But that action left the legacy in place. As most owners had more than one heir, interests in lands already allotted continued to splinter with each generation. In the 1960's, congressional studies revealed that approximately half of all allotted trust lands were held in fractionated ownership; for over a quarter of allotted trust lands, individual allotments were held by more than six owners to a parcel. See *Irving*, 481 U. S., at 708–709 (citing Senate Committee on Interior and Insular Affairs, Indian Heirship Land Survey, 86th Cong., 2d Sess., pt. 2, p. x (Comm. Print 1960–1961)).

In 1983, Congress adopted the ILCA in part to reduce fractionated ownership of allotted lands. Pub. L. 97–459, tit.

II, 96 Stat. 2517. Section 207 of the ILCA—the "escheat" provision—prohibited the descent or devise of small fractional interests in allotments. 96 Stat. 2519.[1] Instead of passing to heirs, such fractional interests would escheat to the tribe, thereby consolidating the ownership of Indian lands. Congress defined the targeted fractional interest as one that both constituted 2 percent or less of the total acreage in an allotted tract and had earned less than $100 in the preceding year. Section 207 made no provision for the payment of compensation to those who held such interests.

In *Hodel* v. *Irving*, this Court invalidated § 207 on the ground that it effected a taking of property without just compensation, in violation of the Fifth Amendment. 481 U. S., at 716–718. The appellees in *Irving* were, or represented, heirs or devisees of members of the Oglala Sioux Tribe. But for § 207, the appellees would have received 41 fractional interests in allotments; under § 207, those interests would escheat to the Tribe. *Id.*, at 709–710. This Court tested the legitimacy of § 207 by considering its economic impact, its effect on investment-backed expectations, and the essential character of the measure. See *id.*, at 713–718; see also *Penn Central Transp. Co.* v. *New York City*, 438 U. S. 104, 124 (1978). Turning first to the economic impact of § 207, the Court in *Irving* observed that the provision's income-generation test might fail to capture the actual economic value of the land. 481 U. S., at 714. The Court next indicated that § 207 likely did not interfere with investment-backed expectations. *Id.*, at 715. Key to the decision in *Irving*, however, was the "extraordinary" character of the

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[1] As originally enacted, § 207 provided:

"No undivided fractional interest in any tract of trust or restricted land within a tribe's reservation or otherwise subjected to a tribe's jurisdiction shall descedent *[sic]* by intestacy or devise but shall escheat to that tribe if such interest represents 2 per centum or less of the total acreage in such tract and has earned to its owner less than $100 in the preceding year before it is due to escheat." 96 Stat. 2519.

Government regulation. *Id.,* at 716. As this Court noted, § 207 amounted to the "virtua[l] abrogation of the right to pass on a certain type of property." *Ibid.* Such a complete abrogation of the rights of descent and devise could not be upheld. *Id.,* at 716–717.

II

In 1984, while *Irving* was still pending in the Court of Appeals for the Eighth Circuit, Congress amended § 207. Pub. L. 96–608, § 1(4), 98 Stat. 3173.[2] Amended § 207 differs from the original escheat provision in three relevant respects. First, an interest is considered fractional if it both constitutes 2 percent or less of the total acreage of the parcel and "is incapable of earning $100 in any one of the five years [following the] decedent's death"—as opposed to one year before the decedent's death in the original § 207. 25 U. S. C. § 2206(a). If the interest earned less than $100 in any one of five years prior to the decedent's death, "there shall be a rebuttable presumption that such interest is incapable of earning $100 in any one of the five years following the death of the decedent." *Ibid.* Second, in lieu of a total ban on devise and descent of fractional interests, amended § 207 permits devise of an otherwise escheatable interest to "any other owner of an undivided fractional interest in such parcel or tract" of land. 25 U. S. C. § 2206(b). Finally, tribes are authorized to override the provisions of amended § 207 through the adoption of their own codes governing the disposition of fractional interests; these codes are subject to the approval of the Secretary of the Interior. 25 U. S. C. § 2206(c). In *Irving*, "[w]e express[ed] no opinion on the constitutionality of § 207 as amended." 481 U. S., at 710, n. 1.

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[2] In 1990, Congress enacted minor revisions to § 207 that are not relevant here. Pub. L. 101–644, § 301, 104 Stat. 4666–4667. Amended § 207, codified at 25 U. S. C. § 2206, provides:

"(a) Escheat to tribe; rebuttable presumption

"No undivided interest held by a member or nonmember Indian in any tract of trust land or restricted land within a tribe's reservation or outside of a reservation and subject to such tribe's jurisdiction shall descend by intestacy or devise but shall escheat to the reservation's recognized tribal government, or if outside of a reservation, to the recognized tribal government possessing jurisdiction over the land if such interest represents 2 per centum or less of the total acreage in such tract and is incapable of earning $100 in any one of the five years from the date of the decedent's death. Where the fractional interest has earned to its owner less than $100 in any one of the five years before the decedent's death, there shall be a rebuttable presumption that such interest is incapable of earning $100 in any one of the five years following the death of the decedent.

"(b) Escheatable fractional interest

"Nothing in this section shall prohibit the devise of such an escheatable fractional interest to any other owner of an undivided fractional interest in such parcel or tract of trust or restricted land.

"(c) Adoption of Indian tribal code

"Notwithstanding the provisions of subsection (a) of this section, any Indian tribe may, subject to the approval of the Secretary, adopt its own code of laws to govern the disposition of interests that are escheatable under this section, and such codes or laws shall take precedence over the escheat provisions of subsection (a) of this section, provided, the Secretary shall not approve any code or law that fails to accomplish the purpose of preventing further descent or fractionation of such escheatable interests."

Under amended § 207, the interests in this case would escheat to tribal governments. The initiating plaintiffs, respondents here, are the children and potential heirs of William Youpee. An enrolled member of the Sioux and Assiniboine Tribes of the Fort Peck Reservation in Montana, William Youpee died testate in October 1990. His will devised to respondents, all of them enrolled tribal members, his several undivided interests in allotted trust lands on various reservations in Montana and North Dakota. These interests, as the Ninth Circuit reported, were valued together at $1,239. 67 F. 3d 194, 199 (1995). Each interest was devised to a single descendant. Youpee's will thus perpetuated existing fractionation, but it did not splinter ownership further by bequeathing any single fractional interest to multiple devisees.

In 1992, in a proceeding to determine the heirs to, and claims against, William Youpee's estate, an Administrative

Law Judge (ALJ) in the Department of the Interior found that interests devised to each of the respondents fell within the compass of amended § 207 and should therefore escheat to the tribal governments of the Fort Peck, Standing Rock, and Devils Lake Sioux Reservations. App. to Pet. for Cert. 27a–40a. Respondents, asserting the unconstitutionality of amended § 207, appealed the ALJ's order to the Department of the Interior Board of Indian Appeals. The Board, stating that it did not have jurisdiction to consider respondents' constitutional claim, dismissed the appeal.

Respondents then filed suit in the United States District Court for the District of Montana, naming the Secretary of the Interior as defendant, and alleging that amended § 207 of the ILCA violates the Just Compensation Clause of the Fifth Amendment. The District Court agreed with respondents and granted their request for declaratory and injunctive relief. 857 F. Supp. 760, 766 (1994).

The Court of Appeals for the Ninth Circuit affirmed. 67 F. 3d 194 (1995). That court carefully inspected the 1984 revisions to § 207. Hewing closely to the reasoning of this Court in *Irving*, the Ninth Circuit determined that amended § 207 did not cure the deficiencies that rendered the original provision unconstitutional. In particular, the Ninth Circuit observed that amended § 207 "continue[d] to completely abolish one of the sticks in the bundle of rights [constituting property] for a class of Indian landowners." 67 F. 3d, at 200. The Ninth Circuit noted that "Congress may pursue other options to achieve consolidation of . . . fractional interests," including Government purchase of the land, condemnation for a public purpose attended by payment of just compensation, or regulation to impede further fractionation. *Ibid.* But amended § 207 could not stand, the Ninth Circuit concluded, for the provision remained "an extraordinary and impermissible regulation of Indian lands and effect[ed] an unconstitutional taking without just compensation." *Ibid.*

On the petition of the United States, we granted certiorari, 517 U. S. 1232 (1996), and now affirm.

III

In determining whether the 1984 amendments to § 207 render the provision constitutional, we are guided by *Irving.*[3] The United States maintains that the amendments, though enacted three years prior to the *Irving* decision, effectively anticipated the concerns expressed in the Court's opinion. As already noted, amended § 207 differs from the original in three relevant respects: It looks back five years instead of one to determine the income produced from a small interest, and creates a rebuttable presumption that this income stream will continue; it permits devise of otherwise escheatable interests to persons who already own an interest in the same parcel; and it authorizes tribes to develop their own codes governing the disposition of fractional interests. These modifications, according to the United States, rescue amended § 207 from the fate of its predecessor. The Government maintains that the revisions moderate the economic impact of the provision and temper the character of the Government's regulation; the latter factor weighed most heavily against the constitutionality of the original version of § 207.

The narrow revisions Congress made to § 207, without benefit of our ruling in *Irving,* do not warrant a disposition different from the one this Court announced and explained in *Irving.* Amended § 207 permits a five-year window rather than a one-year window to assess the income-generating capacity of the interest. As the Ninth Circuit observed, however, argument that this change substantially mitigates the economic impact of § 207 "misses the point." 67 F. 3d, at

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[3] In *Irving* we relied on *Penn Central Transp. Co.* v. *New York City,* 438 U. S. 104 (1978). Because we find *Irving* dispositive, we do not reach respondents' argument that amended § 207 effects a "categorical" taking, and is therefore subject to the more stringent analysis employed in *Lucas* v. *South Carolina Coastal Council,* 505 U. S. 1003 (1992).

199. Amended § 207 still trains on income generated from the land, not on the value of the parcel. The Court observed in *Irving* that "[e]ven if . . . the income generated by such parcels may be properly thought of as *de minimis,*" the value of the land may not fit that description. 481 U. S., at 714. The parcels at issue in *Irving* were valued by the Bureau of Indian Affairs at $2,700 and $1,816, amounts we found "not trivial." *Ibid.* The value of the disputed parcels in this case is not of a different order; as the Ninth Circuit reported, the value of decedent Youpee's fractional interests was $1,239. 67 F. 3d, at 199. In short, the economic impact of amended § 207 might still be palpable.

Even if the economic impact of amended § 207 is not significantly less than the impact of the original provision, the United States correctly comprehends that *Irving* rested primarily on the "extraordinary" character of the governmental regulation. *Irving* stressed that the original § 207 "amount[ed] to virtually the abrogation of the right to pass on a certain type of property—the small undivided interest—to one's heirs." 481 U. S., at 716; see also *id.*, at 717 ("both descent and devise are completely abolished"). The *Irving* Court further noted that the original § 207 "effectively abolish[ed] both descent and devise [of fractional interests] even when the passing of the property to the heir might result in consolidation of property." *Id.*, at 716. As the United States construes *Irving,* Congress cured the fatal infirmity in § 207 when it revised the section to allow transmission of fractional interests to successors who already own an interest in the allotment.

Congress' creation of an ever-so-slight class of individuals equipped to receive fractional interests by devise does not suffice, under a fair reading of *Irving,* to rehabilitate the measure. Amended § 207 severely restricts the right of an individual to direct the descent of his property. Allowing a decedent to leave an interest only to a current owner in the same parcel shrinks drastically the universe of possible successors. And, as the Ninth Circuit observed, the "very limited group [of permissible devisees] is unlikely to contain any lineal descendants." 67 F. 3d, at 199–200. Moreover, amended § 207 continues to restrict devise "even in circumstances when the governmental purpose sought to be advanced, consolidation of ownership of Indian lands, does not conflict with the further descent of the property." *Irving*, 481 U. S., at 718. William Youpee's will, the United States acknowledges, bequeathed each fractional interest to one heir. Giving effect to Youpee's directive, therefore, would not further fractionate Indian land holdings.

The United States also contends that amended § 207 satisfies the Constitution's demand because it does not diminish the owner's right to use or enjoy property during his lifetime, and does not affect the right to transfer property at death through nonprobate means. These arguments did not persuade us in *Irving* and they are no more persuasive today. See *id.*, at 716–718.

The third alteration made in amended § 207 also fails to bring the provision outside the reach of this Court's holding in *Irving*. Amended § 207 permits tribes to establish their own codes to govern the disposition of fractional interests; if approved by the Secretary of the Interior, these codes would govern in lieu of amended § 207. See 25 U. S. C. § 2206(c). The United States does not rely on this new provision to defend the statute. Nor does it appear that the United States could do so at this time: Tribal codes governing disposition of escheatable interests have apparently not been developed. See Tr. of Oral Arg. 42–43.

* * *

For the reasons stated, the judgment of the Court of Appeals for the Ninth Circuit is

Affirmed.

JUSTICE STEVENS, dissenting.

Section 207 of the Indian Land Consolidation Act, 25 U. S. C. § 2206, did not, in my view, effect an unconstitutional taking of William Youpee's right to make a testamentary disposition of his property. As I explained in *Hodel* v. *Irving,* 481 U. S. 704, 719–720 (1987) (opinion concurring in judgment), the Federal Government, like a State, has a valid interest in removing legal impediments to the productive development of real estate. For this reason, the Court has repeatedly "upheld the power of the State to condition the retention of a property right upon the performance of an act within a limited period of time." *Texaco, Inc.* v. *Short,* 454 U. S. 516, 529 (1982). I remain convinced that "Congress has ample power to require the owners of fractional interests in allotted lands to consolidate their holdings during their lifetimes or to face the risk that their interests will be deemed to be abandoned." *Hodel,* 481 U. S., at 732 (STEVENS, J., concurring in judgment). The federal interest in minimizing the fractionated ownership of Indian lands—and thereby paving the way to the productive development of their property—is strong enough to justify the legislative remedy created by § 207, provided, of course, that affected owners have adequate notice of the requirements of the law and an adequate opportunity to adjust their affairs to protect against loss. See *ibid.*

In my opinion, William Youpee did have such notice and opportunity. With regard to notice, the requirements of § 207 are set forth in the United States Code. "Generally, a legislature need do nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply. . . . It is well established that persons owning property within a [jurisdiction] are charged with knowledge of relevant statutory provisions affecting the control or disposition of such property." *Texaco,* 454 U. S., at 531–532. Unlike the landowners in *Hodel,* Mr. Youpee also had adequate opportunity to comply.

More than six years passed from the time § 207 was amended until Mr. Youpee died on October 19, 1990 (this period spans more than seven years if we count from the date § 207 was originally enacted). During this time, Mr. Youpee could have realized the value of his fractional interests (approximately $1,239) in a variety of ways, including selling the property, giving it to his children as a gift, or putting it in trust for them. I assume that he failed to do so because he was not aware of the requirements of § 207. This loss is unfortunate. But I believe Mr. Youpee's failure to pass on his property is the product of inadequate legal advice rather than an unconstitutional defect in the statute.*

Accordingly, I respectfully dissent.

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*Whether his heirs might have had a right to some relief from the author of Mr. Youpee's will if the Court had upheld the statute is not before us. Though not constitutionally required, it would certainly seem prudent for the Government or Mr. Youpee's lawyer to have notified him of § 207's requirements.

INGALLS SHIPBUILDING, INC., ET AL. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 95–1081. Argued November 12, 1996—Decided February 18, 1997

While working for petitioner Ingalls as a shipfitter, Jefferson Yates was exposed to asbestos. After he was diagnosed as suffering from asbestosis and related conditions, he filed a claim for disability benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA or Act). Ingalls admitted compensability and eventually settled with Mr. Yates, who, in the meantime, had sued the manufacturers and suppliers of the asbestos products that were allegedly present in his workplace when he contracted asbestosis. Before his death, he settled with some of these defendants, each of whom required releases from respondent Yates, Mr. Yates' wife, even though she was not a party to the litigation. None of these predeath settlements was approved by Ingalls. After Mr. Yates' death, Mrs. Yates filed a claim for death benefits under the Act. Ingalls contested the claim under Act § 33(g)(1), which states: "If the person entitled to compensation . . . enters into a settlement with a third person . . . for an amount less than the compensation to which the person . . . would be entitled under this [Act], the employer shall be liable for compensation . . . only if written approval of the settlement is obtained from the employer . . . before the settlement is executed." The Administrative Law Judge (ALJ) ruled for Mrs. Yates, and the Benefits Review Board (Board) affirmed, holding that, at the time she executed the predeath settlements, she was not a "person entitled to compensation" under § 33(g)(1) because her husband still lived, and, therefore, her right to death benefits had not yet vested. The Fifth Circuit agreed and affirmed. The court also rejected Ingalls' argument that the Director, Office of Workers' Compensation Programs (OWCP), lacked standing to participate as a respondent in the appeal of a Board decision.

Held:

1. Before an injured worker's death, the worker's spouse is not a "person entitled to compensation" for death benefits within § 33(g)'s

meaning, and does not forfeit the right to collect death benefits under the Act for failure to obtain the worker's employer's approval of settlements entered into before the worker's death. Section 33(g)(1)'s plain language reveals two salient points. First, the use of the present tense (*i. e.*, "enters") indicates that the "person entitled to compensation" must be so entitled at the time of settlement. *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469, 475. Second, the ordinary meaning of the word "entitle" indicates that the "person entitled to compensation" must at the very least be qualified to receive compensation. *Id.*, at 477. Thus, the relevant inquiry in this case is whether Mrs. Yates satisfied the prerequisites for obtaining death benefits under the Act at the time she signed the releases contained in the predeath settlements. Taken together, § 9 of the Act, which governs the distribution of death benefits, and § 2, which contains relevant definitions, indicate that a surviving spouse qualifies for death benefits only if: (i) the survivor's deceased worker-spouse dies from a work-related injury; (ii) the survivor is married to the worker-spouse at the time of death; and (iii) the survivor is either living with the worker-spouse, dependent upon the worker-spouse, or living apart from the worker-spouse because of desertion or other justifiable cause at the time of death. It is impossible to ascertain whether these prerequisites have been met at any time prior to the death of the injured worker. The Court therefore rejects the argument that a person seeking death benefits under the Act can satisfy the prerequisites for those benefits at any earlier time—*e. g.*, when the worker is initially injured or when the worker enters into a predeath settlement. Because Mrs. Yates' husband was alive at the time she signed the releases, she was not a "person entitled to compensation" at that time and was therefore not obligated to seek Ingalls' approval to preserve her entitlement to statutory death benefits. Ingalls' arguments to the contrary—that § 33(g)(1) effectively brings any person who "would be entitled" to compensation within its purview, and that strict adherence to the section's plain language is at odds with the Act's underlying policy of avoiding double recovery—are unpersuasive. Pp. 255–262.

2. Although the Act itself does not speak to the issue, the right to appear as a respondent before the courts of appeals is conferred upon the Director, OWCP, by Federal Rule of Appellate Procedure 15(a), which, in pertinent part, states: "Review of an order of an administrative . . . board . . . must be obtained by filing with the clerk of a court of appeals . . . [the appropriate form]. . . . *In each case, the agency must be named respondent.*" (Emphasis added.) The Court declines to adopt the narrower reading of Rule 15(a) set forth in *Parker* v. *Director*,

OWCP, 75 F. 3d 929, 934 (CA4), and *McCord* v. *Benefits Review Board,* 514 F. 2d 198, 200 (CADC). Where a single overarching agency has two subagencies that wear the hats of, respectively, litigator/enforcer and adjudicator, the "agency" that must be named as a respondent under Rule 15(a) is the overarching agency, which is free to designate its enforcer/litigator as its voice before the courts of appeals. It is not necessary that the overarching agency have absolute veto power over the decisions of its adjudicator, so long as it has substantial control over those decisions. By statute and regulation, the LHWCA adjudicative and enforcement/litigation functions of the Department of Labor are divided between the ALJ's and the Board on the one hand, and the Director on the other, and the Secretary of Labor has named the Director as the Department's designated litigant in the courts of appeals. The Department is thus the "agency" for Rule 15(a) purposes, and the Court concludes that the Director may be named as a respondent in the courts of appeals. Although the Director does not always have the right to appeal as a petitioner to those courts, *Director, Office of Workers' Compensation Programs* v. *Newport News Shipbuilding & Dry Dock Co.,* 514 U. S. 122, 135–136, this does not result in a "lopsided" representation scheme whereby the Director can appear only in defense of the Board's decisions. The Director, even as a respondent, is free to argue on behalf of the petitioner, see *Director, Office of Workers' Compensation Programs* v. *Perini North River Associates,* 459 U. S. 297, 301, and to challenge the Board's decision. Pp. 262–270.

65 F. 3d 460, affirmed.

O'CONNOR, J., delivered the opinion for a unanimous Court with respect to Parts I and II, and the opinion of the Court with respect to Part III, in which REHNQUIST, C. J., and STEVENS, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed an opinion concurring in part and dissenting in part, in which THOMAS, J., joined, *post,* p. 270.

Richard P. Salloum argued the cause for petitioners. With him on the briefs were *Paul B. Howell, William J. Powers, Jr.,* and *George M. Simmerman, Jr.*

Beth S. Brinkmann argued the cause for the federal respondent. On the brief were *Acting Solicitor General Dellinger, Deputy Solicitor General Kneedler, J. Davitt McAteer, Allen H. Feldman,* and *Edward D. Sieger.*

Wynn E. Clark argued the cause for respondent Yates. With him on the brief was *Ransom P. Jones III.**

JUSTICE O'CONNOR delivered the opinion of the Court.

Section 33 of the Longshore and Harbor Workers' Compensation Act (LHWCA or Act), 44 Stat. 1424, as amended, 33 U. S. C. § 933, gives the "person entitled to compensation" two avenues of recovery: Such a person may seek to recover damages from the third parties ultimately at fault for any injuries and still recover compensation under the Act from the covered worker's employer as long as the worker's employer gives its approval before the person settles with any of the third party tortfeasors. The question we decide today is whether an injured worker's spouse, who may be eligible to receive death benefits under the Act after the worker dies, is a "person entitled to compensation" when the spouse enters into a settlement agreement with a third party before the worker's death. We also consider whether the Director of the Office of Workers' Compensation Programs (OWCP) is a proper respondent in proceedings before the courts of appeals.

I

Jefferson Yates worked for Ingalls as a shipfitter at its Pascagoula shipyards in Mississippi between 1953 and 1967 and was exposed to asbestos in his workplace during this time. In March 1981, Mr. Yates was diagnosed as suffering from asbestosis, chronic bronchitis, and possible malignancy in his lungs. Less than a month later, he filed a claim for disability benefits under § 8 of the LHWCA, 33 U. S. C. § 908, asserting that his present condition resulted from his expo-

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*Briefs of *amici curiae* urging reversal were filed for Bethlehem Steel Corp. by *Robert E. Babcock;* and for the National Association of Waterfront Employers et al. by *Charles T. Carroll, Jr., Thomas D. Wilcox,* and *Franklin W. Losey.*

Victoria Edises and *Anne Michelle Burr* filed a brief for the Asbestos Victims of America as *amicus curiae* urging affirmance.

sure to asbestos while employed by Ingalls. Ingalls admitted the compensability of this claim and eventually entered into a formal settlement with Mr. Yates in satisfaction of its liability under the Act.

Mr. Yates, in the meantime, filed a lawsuit in Federal District Court against the 23 manufacturers and suppliers of asbestos whose products were allegedly present at the Pascagoula shipyards during the period in which Mr. Yates contracted asbestosis. Before his death in 1986, Mr. Yates entered into settlement agreements with 8 of the 23 defendants (predeath settlements). Each defendant required Maggie Yates, Mr. Yates' wife, to join in the settlement and to release her present right to sue for loss of consortium, even though she was not a party to the litigation. Six of the eight defendants also required Mrs. Yates to release any cause of action for wrongful death that might accrue to her after her husband died. None of the third party settlements was approved by Ingalls.

After her husband's death, which the parties have stipulated resulted from asbestos exposure that occurred "in the course and scope of [his] employment," App. to Pet. for Cert. A–59, Mrs. Yates filed a claim for death benefits as Mr. Yates' widow under § 9 of the Act, 33 U. S. C. § 909. Ingalls contested the claim on the ground that Mrs. Yates had been a "person entitled to compensation" under the Act when she entered into the predeath settlements. Ingalls argued that by failing to obtain its approval of those settlements she forfeited, under § 33(g)(1), her eligibility for death benefits. In response, Mrs. Yates argued that she was not a "person entitled to compensation" when she entered into those settlement agreements because her husband was still alive at that time. The deputy commissioner referred the matter to an Administrative Law Judge (ALJ).

The ALJ ruled in favor of Mrs. Yates. *Yates* v. *Ingalls Shipbuilding, Inc.*, 26 BRBS 174 (1992). The ALJ recognized that Mrs. Yates was no more than a "*potential* widow" when she entered into the settlement agreements. App. to Pet. for Cert. A–67. Reasoning that the prerequisites for the recovery of death benefits could not be established prior to the worker's death, he found that the "spouse of an injured employee has no cause of action [under the Act] until the injured employee dies from his work-related injury." *Id.*, at A–68. Because Mrs. Yates had no cause of action for death benefits prior to her husband's death, the ALJ concluded that she was not a "person entitled to compensation" obligated to seek the employer's approval of any settlements signed at that time.

Ingalls appealed to the Benefits Review Board. *Yates* v. *Ingalls Shipbuilding, Inc.*, 28 BRBS 137 (1994). The Director, OWCP, appeared as a respondent in support of Mrs. Yates. The Board affirmed, largely in reliance upon our decision in *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469 (1992), in which we held that an injured worker was a "person entitled to compensation" for the purpose of disability benefits under § 8 of the Act at "the moment his right to recovery vested," *id.*, at 477, which in that case was when the worker suffered his permanent injury. The Board reasoned that *Cowart*'s "vesting" rationale applied to death as well as disability benefits, and observed that Mrs. Yates' "right to death benefits under the Act could not have vested *before* she became a widow." App. to Pet. for Cert. A–35 (emphasis in original). Although it might appear at the time of settlement that Mrs. Yates would likely become a "person entitled to compensation" under the Act, before her husband's death any one of several events might occur that would prevent her from recovering any death benefits under the Act—she might predecease her husband, she might divorce her husband, or her husband might die from causes independent of his work-related injury. For these reasons, the Board held that Mrs. Yates was not a "person entitled to compensation" at the time she entered into the predeath settlements, but acknowledged that its ruling was at odds with the decision of the Court of Appeals for the Ninth Circuit in *Cretan* v. *Bethlehem Steel Corp.*, 1 F. 3d 843 (1993), cert. denied, 512 U. S. 1219 (1994).

Ingalls again appealed, this time to the Court of Appeals for the Fifth Circuit. 65 F. 3d 460 (1995). Although Ingalls renewed its § 33(g) argument, the Court of Appeals rejected it for the reasons advanced by the Board. Ingalls also moved to strike the brief of the Director and to disallow the Director's further participation in the appeal on the ground that the Director lacked standing. The Court of Appeals dismissed this argument in a footnote, citing its prior decision in *Ingalls Shipbuilding Div., Litton Systems, Inc.* v. *White,* 681 F. 2d 275, 280–284 (CA5 1982), overruled on other grounds, *Newpark Shipbuilding & Repair, Inc.* v. *Roundtree,* 723 F. 2d 399, 406–407 (CA5) (en banc), cert. denied, 469 U. S. 818 (1984), in which the court held that "the Director has standing to participate as a respondent in the appeal of a [Benefits Review Board] decision [before the Court of Appeals]." 65 F. 3d, at 463, n. 2. The court distinguished our decision in *Director, Office of Workers' Compensation Programs* v. *Newport News Shipbuilding & Dry Dock Co.,* 514 U. S. 122 (1995), as relevant only to the question of the Director's standing as a petitioner to the Court of Appeals, and not as a respondent.

The Courts of Appeals are in disagreement over both questions addressed. The Courts of Appeals for the Fifth and Ninth Circuits are divided on the meaning of the phrase "person entitled to compensation." Compare 65 F. 3d, at 464 (potential widow is not a "person entitled to compensation"), with *Cretan, supra,* at 847 (potential widow is a "person entitled to compensation"). The Courts of Appeals for the Fourth, Fifth, and Ninth Circuits, and for the District of Columbia, are split over whether the Director may participate in proceedings before the Courts of Appeals as a respondent. Compare *Parker* v. *Director, OWCP,* 75 F. 3d 929, 935 (CA4 1996) (Director may not appear), cert. denied, *post,* p. 812, with *Shahady* v. *Atlas Tile & Marble Co.*, 673 F. 2d 479, 483–484 (CADC 1982) (Director is a proper respondent as a person "adversely affected or aggrieved" by the decision below); *Goldsmith* v. *Director, OWCP*, 838 F. 2d 1079, 1080 (CA9 1988) (same); *White, supra*, at 281–282 (Director may appear pursuant to Federal Rule of Appellate Procedure 15(a)).

We granted certiorari to resolve these splits, 517 U. S. 1186 (1996).

II

We begin our inquiry into the meaning of the phrase "person entitled to compensation" in § 33(g), as we must, with an examination of the language of the statute. *Moskal* v. *United States*, 498 U. S. 103, 108 (1990) ("In determining the scope of a statute, we look first to its language, giving the words used their ordinary meaning") (citations and internal quotation marks omitted). Section 33(g)(1) states in pertinent part:

> "If the person entitled to compensation . . . *enters* into a settlement with a third person . . . for an amount less than the compensation to which the person . . . would be entitled under this chapter, the employer shall be liable for compensation as determined under subsection (f) of this section only if written approval of the settlement is obtained from the employer and the employer's carrier, before the settlement is executed, and by the person entitled to compensation . . . ." 33 U. S. C. § 933(g)(1) (emphasis added).

The plain language of this subsection reveals two salient points. First, the use of the present tense (*i. e.*, "enters") indicates that the "person entitled to compensation" must be so entitled at the time of settlement. Second, the ordinary meaning of the word "entitle" indicates that the "person entitled to compensation" must at the very least be qualified to receive compensation. Black's Law Dictionary 532 (6th ed.

1990) (defining "entitle" as "To qualify for; to furnish with proper grounds for seeking or claiming").

We reached the same conclusion in *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469 (1992). There, Cowart, an injured worker, settled with a third party without obtaining the consent of his employer or his employer's insurance carrier. Cowart thereafter filed a claim for disability benefits under the Act, which his employer contested. The employer argued that Cowart had been a "person entitled to compensation" under the Act at the time of his settlement, and that his failure to obtain his employer's approval of the settlement barred any further recovery of benefits under the Act. In response, Cowart asserted that he had not been a "person entitled to compensation" when he entered into the settlement because that phrase referred only "to injured workers who are either already receiving compensation payments from their employer, or in whose favor an award of compensation has been entered." *Id.*, at 475.

The Court held that Cowart was barred by § 33(g) from receiving further compensation under the Act. We recognized that the relevant time for examining whether a person is "entitled to compensation" is the time of settlement. *Ibid.* ("The question is whether Cowart, at the time of . . . settlement, was a 'person entitled to compensation' under the terms of § 33(g)(1) of the LHWCA"). We then addressed the definition of the term "person entitled to compensation." We said:

> "Both in legal and general usage, the normal meaning of entitlement includes a right or benefit for which a person qualifies, and it does not depend upon whether the right has been acknowledged or adjudicated. It means only that the person satisfies the prerequisites attached to the right." *Id.*, at 477.

We concluded that Cowart had satisfied the prerequisites for obtaining the permanent disability benefits at issue in that case when he was injured, so that he was a "person entitled to compensation" and required to obtain his employer's approval at the time he entered into the settlement agreement. *Ibid.*

With *Cowart* and the plain language of § 33(g) in mind, the relevant inquiry in this case is whether Mrs. Yates satisfied the prerequisites for obtaining death benefits under the Act at the time she signed the releases contained in the predeath settlements. Section 9 of the Act, 33 U. S. C. § 909(b), governs the distribution of death benefits, and provides that a "widow or widower" is entitled to such benefits "[i]f the [employee's] injury causes death." See also § 902(11) (defining "death" as a basis for a right to compensation as "death resulting from an injury"); § 902(2) (defining "injury" as "accidental injury or death arising out of and in the course of employment"). The Act defines a "widow or widower" as "the decedent's wife or husband living with or dependent for support upon him or her at the time of his or her death; or living apart for justifiable cause or by reason of his or her desertion at such time." § 902(16).

Taken together, these statutes indicate that a surviving spouse qualifies for death benefits only if: (i) the survivor's deceased worker-spouse dies from a work-related injury; (ii) the survivor is married to the worker-spouse at the time of the worker-spouse's death; and (iii) the survivor is either living with the worker-spouse, dependent upon the worker-spouse, or living apart from the worker-spouse because of desertion or other justifiable cause at the time of the worker-spouse's death. Cf. *Thompson* v. *Lawson,* 347 U. S. 334, 336 (1954) (looking to status of spouse at time of death to determine whether spouse is a "widow" or "widower" for purposes of LHWCA). It is impossible to ascertain whether these prerequisites have been met at any time prior to the death of the injured worker. Accord, *Cortner* v. *Chevron Int'l Oil Co.,* 22 BRBS 218, 220 (1989) ("It is not until death occurs that the right to benefits arises and the potential beneficiaries are identified"); 51 Fed. Reg. 4270, 4276 (1986) ("Since a claim for survivor benefits does not arise until the employee's death, there is no claim [against the employer] that can be settled [before then]"). We therefore reject the argument that a person seeking death benefits under the Act can satisfy the prerequisites for those benefits at any earlier time—*e. g.*, when the worker is initially injured or when the worker enters into a predeath settlement. See also 20 CFR § 702.241(g) (1996) (no one can enter a settlement agreement with the employer regarding death benefits before the worker dies). Because Mrs. Yates' husband was alive at the time she released her potential wrongful death actions, she was not a "person entitled to compensation" at that time and was therefore not obligated to seek Ingalls' approval to preserve her entitlement to statutory death benefits.

Ingalls contends that the plain language of § 33(g)(1) mandates a contrary conclusion. Ingalls' analysis focuses on the presence of the phrase "would be entitled":

> "If the person entitled to compensation . . . enters into a settlement with a third person . . . for an amount less than the compensation to which the person . . . *would be entitled* under this [Act], the employer shall be liable [only if approval is obtained]." 33 U. S. C. § 933(g)(1) (emphasis added).

Because this subsection examines the compensation to which the person "would be entitled" under the Act, argues Ingalls, it "encompasses a broad forward looking concept" that effectively brings any "person who would be entitled to compensation" within its purview. Brief for Petitioners 15. As support, Ingalls draws upon the decision of the Ninth Circuit Court of Appeals in *Cretan* v. *Bethlehem Steel Corp.*, 1 F. 3d 843 (1993). On facts almost identical to those presented here, the Court of Appeals held that the injured worker's spouse was a "person entitled to compensation" for death benefits prior to her husband's death. The court found "little sense in a distinction that turns on whether the death for which settlement is made has yet to occur." *Id.*, at 847.

Ingalls essentially takes issue with our conclusion that the proper time to evaluate whether a person is "entitled to compensation" is the time of settlement. Ingalls' position is at odds with our precedent, see *Cowart,* 505 U. S., at 475, and with the plain language of this statute, *supra,* at 255. The phrase "would be entitled" in subsection (g)(1) simply frames the inquiry into whether the approval requirement applies at all. If the person entitled to compensation enters into a settlement for an amount less than that to which the person "would be entitled" under the Act, then the employer's approval must be obtained. If the settlement is for an amount greater than or equal to the amount to which the person "would be entitled," then the employer's approval need not be obtained. 505 U. S., at 482. Ingalls' reading would assign an additional and unnecessary purpose to the phrase. Under Ingalls' suggested reading, a worker's spouse who signs a predeath settlement is considered a "person entitled to compensation" even though, in the time between the settlement and the worker's death, the worker's spouse might become ineligible for those death benefits (*e. g.,* by predeceasing or divorcing the worker). In this context, the worker's spouse would not actually be entitled to death benefits, but would nonetheless be considered the "person entitled" to such benefits. This reading cannot be supported by the statutory language.

Ingalls also contends that we should depart from a plain reading of the statutory language because strict adherence to it is at odds with the policies underlying the Act. More specifically, Ingalls avers that our reading of § 33(g) will effectively abrogate the employer's right to offset its liability for death benefits by any amounts received by the surviving spouse in predeath settlements. Section 33(f) allows an employer to reduce its compensation obligations under the Act by the net amount of damages that the "person entitled to compensation" recovers from third parties. 33 U. S. C. § 933(f) ("If the person entitled to compensation institutes proceedings . . . the employer shall be required to pay as compensation under this chapter a sum equal to the excess of the amount which the Secretary determines is payable on account of such injury or death over the net amount recovered against such third person"). If, as Ingalls asserts, the phrase "person entitled to compensation" means the same thing under § 33(f) as it does under § 33(g), see *Cowart, supra,* at 479, then our holding today means that an employer would not be permitted to reduce the spouse's death benefits by any amounts the spouse receives from predeath settlements. Such a spouse would be able to recover once from the third party and again from the worker's employer under the Act after the worker's death. In effect, a spouse in this situation—unlike a spouse who entered into settlements the day after the worker dies—would receive double recovery for her injuries. This double recovery, Ingalls contends, contravenes one of the central tenets of the Act set forth in § 3(e), 33 U. S. C. § 903(e), of the Act: "[A]ny amounts paid to an employee for the same injury, disability, or death for which benefits are claimed under this chapter pursuant to any other workers' compensation law or section 688 of title 46, Appendix (relating to recovery for injury to or death of seamen), shall be credited against any liability imposed by this chapter." See also *Cowart, supra,* at 483 (noting that the Act "ensures against fraudulent double recovery by the employee"); 2A A. Larson, Workers' Compensation Law § 71.21 (1996) ("[T]he policy of avoiding double recovery is a strong one . . ."). In Ingalls' view, our reading of the statute gives a "potential widow . . . greater benefits and protections than that afforded to covered employees who settle their third party claims." Brief for Petitioners 22–23.

This entire argument, however, presupposes that the definition we today give to "person entitled to compensation" under § 33(g) applies without qualification to § 33(f) as well.

This is a question we have yet to decide, and is one we leave for another day. If, for the sake of argument, we assumed that Ingalls' proposition were correct, our conclusion on the question presented in this case would not change. We agree that the Act generally reflects a policy of avoiding double recovery. See 33 U. S. C. § 903(e). But § 903(e) is of fairly recent vintage, Pub. L. 98–426, 98 Stat. 1640; *E. P. Paup Co.* v. *Director, OWCP*, 999 F. 2d 1341, 1350 (CA9 1993) ("Prior to [enactment of] section 903(e), the credit doctrine allowed offset of benefits against LHWCA awards *only if* prior benefits were awarded under the LHWCA") (emphasis added), and its reach is not all inclusive. See, *e. g., Todd Shipyards Corp.* v. *Director, OWCP*, 848 F. 2d 125 (CA9 1998) (allowing double recovery of veterans disability benefits and LHWCA benefits); *Brown* v. *Forest Oil Corp.*, 29 F. 3d 966, 971 (CA5 1994) ("Although admittedly the LHWCA has a general policy to avoid double recoveries, we have also noted that limitations on employee recovery are not favored absent statutory authority") (footnote omitted). Because the prohibition against double recovery is not absolute, we do not find the possibility of such recovery in this context to be so absurd or glaringly unjust as to warrant a departure from the plain language of the statute. See *United States* v. *Rodgers*, 466 U. S. 475, 484 (1984) (plain language controls unless it leads to results that are " 'absurd or glaringly unjust' "). Furthermore, as Ingalls acknowledges, see Reply Brief for Petitioners 13, subrogation under the Act is not an employer's exclusive remedy against third parties responsible for employees' injuries; an employer in Ingalls' position would remain free to seek indemnification against a third party through a tort action in state or federal court. *Pallas Shipping Agency, Ltd.* v. *Duris*, 461 U. S. 529, 538 (1983); *Federal Marine Terminals, Inc.* v. *Burnside Shipping Co.*, 394 U. S. 404, 412–414 (1969). Accordingly, we hold that before an injured worker's death, the worker's spouse is not a "person entitled to compensation" for death benefits within the meaning of

LHWCA §33(g), and does not forfeit the right to collect death benefits under the Act for failure to obtain the worker's employer's approval of settlements entered into before the worker's death.

III

Ingalls also challenges the "standing" of the Director, OWCP, to appear before the courts of appeals as a respondent in cases in which there are already two adverse litigants. To assess this claim, familiarity with the Act's appeals process, as well as with the Director's role within that process, is helpful.

A person seeking compensation under the Act must file a timely claim with the local deputy commissioner. 33 U. S. C. §913(a) (1-year limitation period). The commissioner notifies the employer of the claim, §919(b), at which time the employer might: (i) agree to pay the amount of benefits fixed by the Act, 20 CFR §702.231 *et seq.* (1996) (procedures for payment of noncontroverted claims); (ii) enter into a formal settlement with the person seeking compensation for a (presumably) lesser amount, subject to the approval of the deputy commissioner or an ALJ, 33 U. S. C. §908(i); 20 CFR §702.241 *et seq.* (1996); or (iii) give notice that it is denying liability for, or controverting, the claim, §702.251. If the employer controverts the claim, the deputy commissioner is empowered to attempt to resolve the parties' dispute informally. §702.311 *et seq.* Should informal discussions prove unsuccessful, the commissioner refers the matter to an ALJ and a formal hearing is held. 33 U. S. C. §§919(c)–(d); 20 CFR §702.316 (1996). "[A]ny party in interest" may appeal the ALJ's decision to the Benefits Review Board. 33 U. S. C. §921(b)(3). An appeal from the Board's decision to the courts of appeals may be initiated by "[a]ny person adversely affected or aggrieved by a final order of the Board." §921(c); see also 20 CFR §802.410(a) (1996).

The Director, OWCP, plays a significant role in this process. In addition to being charged with the LHWCA's administration, § 701.202 (transferring to the Director "all functions of the Department of Labor with respect to the administration of benefits programs under the [LHWCA]"), and enforcement, § 802.410(b) (noting that Director is "responsible for the administration and enforcement of the [LHWCA]"); see also *Newport News,* 514 U. S., at 134 (noting Director's "duty of uniform *administration* and *enforcement*"), the Director has also been authorized by the Secretary of Labor to appear as a litigant before the relevant adjudicative branches of the Department of Labor, the ALJ, and the Benefits Review Board. 20 CFR § 702.333(b) (1996) ("The Solicitor of Labor or his designee may appear and participate in any formal hearing [before an ALJ] held pursuant to these regulations on behalf of the Director as an interested party"); § 802.202(a) ("Any party . . . may appear before and/or submit written argument to the [Benefits Review] Board"); § 801.2(a)(10) (defining "party" to include "the Secretary or his designee"); § 802.201(a) ("The Director, OWCP, . . . shall [under certain circumstances] be considered a party adversely affected" for purposes of initiating appeal to Board).

The Director may also appear before the courts of appeals, although the limits of the Director's authority to do so are less clear. Section 21(c) of the Act, 33 U. S. C. § 921(c), provides in relevant part that

> "[a]ny person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the United States court of appeals for the circuit in which the injury occurred . . . ."

In *Newport News,* we held that "the phrase 'person adversely affected or aggrieved' does not refer to an agency acting in its governmental capacity," 514 U. S., at 130, so that the Director was therefore not permitted to appeal from a decision of the Benefits Review Board when the Board's decision did no more than "impai[r] [the Director's] ability to achieve the Act's purposes and to perform the administrative duties the Act prescribes," *id.*, at 126. We expressed no view on the question whether the Director can appear before the court of appeals, not as a petitioner seeking review, but as a respondent. *Id.*, at 127, n. 2.

Any impediment to the Director's appearance as a respondent in this case is not of constitutional origin. As we stated in *Newport News*, although the Director had no statutory authorization to petition the Court of Appeals, "Congress *could* have conferred standing upon the Director without infringing Article III of the Constitution." *Id.*, at 133. In light of this observation, Article III surely poses no bar to the Director's participation as a respondent in those courts. Cf. *Diamond* v. *Charles*, 476 U. S. 54, 68–69 (1986) (reserving question whether persons seeking to intervene "must satisfy not only the requirements of [Federal Rule of Civil Procedure] 24(a)(2), but also the requirements of Art. III").

Whether the Director has statutory authority to appear as a respondent before the courts of appeals is not as easily resolved. The Act itself does not speak to the issue. Section 21(c) of the Act, by its very terms, defines only who "may obtain a review of [a final order of the Board]," 33 U. S. C. § 921(c); it does not purport to delineate who may appear in those proceedings once a proper party initiates them. Thus, we must reject Ingalls' argument that § 21(c) requires the Director to demonstrate an "advers[e] [e]ffect or aggriev[ement]" in order to appear as a respondent.

Section 21a of the Act, 33 U. S. C. § 921a, similarly provides no authorization. While § 21a states that "[a]ttorneys appointed by the Secretary shall represent the Secretary, the deputy commissioner, or the Board in any court proceedings under section 921 of this title or other provisions of this chapter," it says nothing about when the Secretary may be a party to those proceedings in the first place. See also 20 CFR § 802.410(b) (1996) ("The Director, OWCP, . . . shall be deemed to be the proper party on behalf of the Secretary of Labor in all review proceedings conducted pursuant to section 21(c) of the LHWCA"). Nor need we infer the Director's right to appear as a respondent in order for § 21a to have meaning. Although *Newport News* curtailed the Secretary's right to appear as a petitioner before the courts of appeals in most circumstances, that decision did not foreclose an appearance as a petitioner in all situations. See, *e. g., Newport News, supra,* at 128, n. 3 (leaving open the possibility that the Director may be a "person adversely affected or aggrieved" when appealing a Board ruling adverse to the § 944 fund).

Left with no guidance from the Act itself, we turn to the general rule that governs all appeals from administrative agencies to the courts of appeals, Federal Rule of Appellate Procedure 15(a). That Rule, in pertinent part, states:

> "Review of an order of an administrative agency, board, commission, or officer (hereinafter, the term 'agency' will include agency, board, commission, or officer) must be obtained by filing with the clerk of a court of appeals . . . [the appropriate form indicated by law]. . . . *In each case the agency must be named respondent.*" (Emphasis added.)

We believe that it is this Rule that confers upon the Director the right to appear as a respondent before the courts of appeals. Rule 15(a) clearly applies to appeals from the Benefits Review Board: The LHWCA authorizes appellate review of the "final order of the [Benefits Review] Board," 33 U. S. C. § 921(c), and Rule 15(a) applies to "[r]eview of an order of an administrative agency [or] board." We decline to read Rule 15(a) more narrowly, as the Courts of Appeals for the Fourth Circuit and the District of Columbia have done. Those courts have held that Rule 15(a) applies only where "a single private party is contesting the action of an agency, which agency must appear and defend on the merits to insure the proper adversarial clash requisite to a 'case or controversy.'" *McCord* v. *Benefits Review Board,* 514 F. 2d 198, 200 (CADC 1975). Where "there is sufficient adversity between [the employer and the claimant] to insure proper litigation," *ibid.*, they reason, "the Director's presence as a party is not necessary" and would in fact run afoul of Federal Rule of Appellate Procedure 1(b) by "'extend[ing] . . . the jurisdiction of the courts of appeals.'" *Parker,* 75 F. 3d, at 934 (citing *McCord, supra,* at 200); see also Fed. Rule App. Proc. 1(b) ("These rules shall not be construed to extend or limit the jurisdiction of the courts of appeals as established by law").

We reject this interpretation, which would effectively require us to tack the words "when necessary to preserve adversity" onto the otherwise unqualified language in Rule 15(a) that "the agency must be named respondent." Where there is already a case or controversy between parties properly before a court, as there is in this case between Ingalls and Mrs. Yates who properly appear pursuant to 33 U. S. C. § 921(c), that court's jurisdiction is not extended by the inclusion of an additional party whose presence is also consistent with Article III, see *supra,* at 264. See *Pittston Stevedoring Corp.* v. *Dellaventura,* 544 F. 2d 35, 43, n. 5 (CA2 1976) ("The existence of sufficient adversity between private parties has not been thought to preclude the Government's right to be a party in many other sorts of review of federal administrative action"), aff'd on other grounds *sub nom. Northeast Marine Terminal Co.* v. *Caputo,* 432 U. S. 249 (1977). JUSTICE SCALIA is concerned that Rule 1(b) might be violated in the converse situation—*i. e.*, when the Director is the sole respondent whose presence is "necessary to preserve adversity." See *post,* at 274. Although the Director's participation in that case would not extend the courts' jurisdiction beyond the perimeter of Article III, see *Newport News,* 514 U. S., at 133 (no Article III impediment to the Director's participation), it is possible that such participation might exceed the court's *statutory* authority to hear the case. While this transgression of statutory authority is not a question we decide today, it nevertheless raises a concern relevant to our interpretation of Rule 15(a). We do not find this concern controlling, however, when, as in this case, the Director is not in fact the sole respondent.

Having concluded that Rule 15(a) applies, the question becomes which "agency" must be named as a respondent. When an agency has a unitary structure—*i. e.*, where a single entity wears the hats of adjudicator and litigator/enforcer—the application of Rule 15(a) is straightforward. The Federal Communications Commission (FCC), for instance, has adjudicative duties, 47 U. S. C. §§154(j), 155(c), as well as enforcement duties that require it to appear as a litigant, §402. It is therefore proper to name the FCC as the respondent "agency" in proceedings before the courts of appeals under Rule 15(a). Indeed, it is necessary to do so, since the FCC is the only "agency" that could be named. See also 29 U. S. C. §160(f) (National Labor Relations Board adjudicates unfair labor practice claims and litigates before the courts of appeals); 16 U. S. C. §§825f, 825g (Federal Energy Regulatory Commission investigates, enforces, and adjudicates violations of the Federal Power Act).

But not all agencies share this unitary structure. Some have a split-function regime in which Congress places adjudicatory authority outside the agency charged with administering and enforcing the statute. The Occupational Safety and Health Act of 1970, for example, gives general enforcement authority to the Department of Labor, but vests adjudicatory authority in an independent body, the Occupational Safety and Health Review Commission. See 29 U. S. C. §§651(b)(3), 661; *Martin* v. *Occupational Safety and Health Review Comm'n,* 499 U. S. 144, 147 (1991). See also 30 U. S. C. §§811, 823 (authorizing Secretary of Labor to promulgate health and safety standards under the Federal Mine Safety and Health Act of 1977, but establishing independent

Federal Mine Safety and Health Review Commission to exercise adjudicatory authority under the Act). Other split-function regimes involve only one agency, whose adjudicative and enforcement/litigation duties have been divided by Congress between two sub-"agencies," both of which are under the umbrella of the same overarching agency.

In this latter type of split-function regime, the only type that we address today, it is the overarching agency that is the "agency" for the purposes of Rule 15(a), since an order of the agency's designated adjudicator is in reality an order of the agency itself. That "agency" may then be free to designate its enforcer/litigator as its voice before the courts of appeals. To require the agency's adjudicator to appear before the courts of appeals makes little sense because that adjudicator has no more interest or stake in defending its orders in the courts of appeals than does a district court. It would also compel what we believe is a strange result—the substitution of an agency's adjudicator for its designated litigator once the case reaches the courts of appeals.

Although our interpretation of Rule 15(a), as the dissent points out, is not free from anomalies, neither is the dissent's interpretation. In particular, we take issue with the dissent's view that the overarching agency must have absolute veto power over the decisions of its adjudicator before the adjudicator is deemed to be "within" the agency and before the order of one can be considered the order of the other. Cf. 8 CFR § 3.1(h) (1996) (Attorney General may review and modify decisions of the Board of Immigration Appeals, the Immigration and Naturalization Service's adjudicator). Other methods of agency oversight exist, and an agency's inability to employ the most compelling form of oversight does not mean it possesses *no* supervisory authority over its tribunal or that it is therefore somehow unfair to treat the adjudicator's order as the agency's. The Secretary of Labor's power under the LHWCA to appoint all five members of the Benefits Review Board, 33 U. S. C. § 921(b)(1), and to establish the rules of procedure of the Board, 20 CFR § 802.101 *et seq.* (1996), demonstrates the Secretary's indirect but substantial control over the Board and its decisions. Perhaps these concerns animated the Courts of Appeals actually confronted with this situation, since they have seen fit, in over 2,000 decisions, to allow the Director's participation as a respondent. WESTLAW, CTA database (Jan. 21, 1997). Should Congress wish to alter this review scheme, it is, of course, free to do so.

As it stands now, however, we conclude that the Director may be named as a respondent in the courts of appeals. By statute and by regulation, the adjudicative and enforcement/litigation functions of the Department of Labor with respect to the LHWCA are divided between the ALJ's and the Benefits Review Board on the one hand, 20 CFR § 702.332 (1996) (formal hearings conducted by ALJ's); 33 U. S. C. § 921(b) (appeals from ALJ's heard by Benefits Review Board), and the Director on the other, see *supra,* at 262–263. Because the Benefits Review Board is a subdivision of the Department of Labor, see H. R. Rep. No. 92–1441, p. 12 (1972) (describing Board as "provid[ing] an internal administrative review of initial decisions in contested cases by a three-man board *within the Department of Labor*") (emphasis added); 20 CFR § 801 *et seq.* (1996) (describing "establishment and the organizational structure of the Benefits Review Board *of the Department of Labor*") (emphasis added), the Board's order is the Department's order, and the Department of Labor is the "agency" for the purposes of Rule 15(a). Congress, however, has delegated to the Secretary of Labor, the Department's chief administrator, the right to choose the Department's legal representative, 33 U. S. C. § 921a, and the Secretary has exercised that discretion by naming the Director as the Department's designated litigant in the courts of appeals. 20 CFR § 802.410(b) (1996).

This conclusion does not upset the balance of representation in the courts of appeals. Although in *Newport News* we held that the Director does not always have the right to appeal as a petitioner to the courts of appeals, 514 U. S., at 135–136, and we now hold that the Director may appear as a respondent before those courts, this will not result in a "lopsided" scheme whereby the Director can appear only in defense of the Benefits Review Board's decisions. The Director, even as a respondent, is free to argue on behalf of the petitioner, see *Director, Office of Workers' Compensation Programs* v. *Perini North River Associates,* 459 U. S. 297, 301 (1983) (Director appeared as respondent before the Court of Appeals for the Second Circuit but filed a brief on behalf of the petitioner), and to challenge the decision of the Board. Indeed, the Director's participation before the courts of appeals would be plenary but for the inability to initiate an appeal; the Director must usually wait for someone else to do so first. Although this is unusual, it does not result in a "lopsided" proceeding and is an oddity wrought by congressional "oversight," *Newport News,* 514 U. S., at 128–129 (GINSBURG, J., concurring), and not by virtue of our holding today.

For these reasons, the judgment of the United States Court of Appeals for the Fifth Circuit is affirmed.

It is so ordered.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, concurring in part and dissenting in part.

Today's opinion concludes, on the basis of Federal Rule of Appellate Procedure 15(a), that the Director of the Office of Workers' Compensation Programs, a subagency within the Department of Labor, is a proper respondent in the courts of appeals when review is sought of an order of the Benefits Review Board (Board or BRB), an independent adjudicatory body within that Department. This conclusion is at odds with the plain language of the Rule, and produces a bizarre arrangement that will have troublesome consequences for both agencies and private parties. I respectfully dissent from the Court's judgment on this issue.

Federal Rule of Appellate Procedure 15(a) provides:

> "Review of an order of an administrative agency, board, commission, or officer (hereinafter, the term 'agency' will include agency, board, commission, or officer) must be obtained by filing [a petition for review]. . . . In each case the agency must be named respondent."

It is clear (and the Court does not say otherwise) that despite the Rule's shorthand use of "agency" in the second sentence, the entity that must be named respondent is the one whose order is under review, whether it is an agency, board, commission, or officer. Thus, in determining whether the Rule authorizes the Director, as representative of the Department of Labor, to appear as a respondent in the courts of appeals, the central question is whether the order under review is that of the Department. The answer to that question is obviously and unavoidably no.

To begin with, the very statute that provides for the judicial review at issue indicates that the order under review is that of the BRB:

> "Any person adversely affected or aggrieved by *a final order of the Board* may obtain a review of that order in the United States court of appeals for the circuit in which the injury occurred . . . . Upon such filing, the court shall have jurisdiction of the proceeding and shall have the power to give a decree affirming, modifying, or setting aside, in whole or in part, the *order of the Board* . . . ." 44 Stat. 1436–1437, as amended, 33 U. S. C. § 921(c) (emphasis added).

The governing statute elsewhere specifies that the Board is the statutorily created entity responsible for "hear[ing] and determin[ing] appeals . . . taken by any party in interest from decisions with respect to claims of employees under" the Longshore and Harbor Workers' Compensation Act

(LHWCA). § 921(b)(3). The Board's disposition of those appeals is not subject to review by the Secretary of Labor in his capacity as head of the Department, but must be appealed to the courts pursuant to the review provision quoted above.

Despite the clarity of the statute, the Court concludes that it is "in reality" an order of the Department that is under review in the courts of appeals. *Ante,* at 267–270. It offers two arguments in support of this proposition. First, it says—relying upon a regulation promulgated by the Secretary, 20 CFR § 801.1 (1996), and upon a statement in the House Report on the LHWCA Amendments of 1972, 86 Stat. 1251—that the Board is "a subdivision of the Department of Labor." *Ante,* at 269. But of course neither a Secretary's regulation nor a House Committee's report has the power to transform a statutory entity into something it is not. While the Board may be a "subdivision" of the Department of Labor—and thereby subject to the Secretary's authority—for certain purposes, see, *e. g.,* 33 U. S. C. § 921(b)(1) (Secretary appoints Board members); § 939(a) ("Except as otherwise specifically provided, the Secretary shall administer the provisions of" the LHWCA); 20 CFR § 802.101 *et seq.* (1996) (regulations of Secretary establishing rules of procedure for Board), the Court expressly acknowledges that the Board is *not* a subdivision in the sense that the Secretary, as head of the Department, can direct or override its decisions. *Ante,* at 268. But *that* sense is the one relevant to the question whether an order of the Board is "in reality" an order of the Department, *ibid.* Insofar as vindication of the order is concerned, there is no "necessary identity of interest" between the Board and the Department or the Director as its chosen delegate. *Shahady* v. *Atlas Tile & Marble Co.,* 673 F. 2d 479, 485 (CADC 1982) (emphasis deleted). Indeed, the Department through its delegate may well be hoping to see the Board's order *overturned* in the court of appeals. See, *e. g., Parker* v. *Director, Office of Workers' Compensation*

Programs, 75 F. 3d 929, 932–934, 935, n. 7 (CA4), cert. denied, *post,* p. 812; *Simpson* v. *Director, Office of Workers' Compensation Programs,* 681 F. 2d 81, 82 (CA1 1982), cert. denied *sub nom. Bath Iron Works Corp.* v. *Director, Office of Workers' Compensation Programs,* 459 U. S. 1127 (1983). The Court's attribution of the Board's order to the Department contradicts our recognition, only two Terms ago, that it is "quite simply contrary to the whole structure" of the LHWCA to view the Board's adjudicatory functions as the province of (implicitly) the Department as overarching agency and (explicitly) the Director as its delegate. *Director, Office of Workers' Compensation Programs* v. *Newport News Shipbuilding & Dry Dock Co.,* 514 U. S. 122, 134 (1995).

The second argument offered in support of the view that the Director is a proper respondent when review is sought of an order of the Board is that (1) Rule 15(a) *requires* the naming of *someone* representing the agency, and (2) the Director is certainly a more sensible candidate than the Board. *Ante,* at 267, 268. The second part of this analysis, the *faute de mieux* point, is questionable: The Board could readily develop a staff to defend its judgments, and it is hard to imagine a *worse* defender than an entity that is free to disagree (and often does disagree) with the order under review. Cf. *Pittston Stevedoring Corp.* v. *Dellaventura,* 544 F. 2d 35, 42, n. 5 (CA2 1976) (Friendly, J.) (suggesting that Board rather than Director is proper respondent), aff'd on other grounds *sub nom. Northeast Marine Terminal Co.* v. *Caputo,* 432 U. S. 249 (1977). But the real flaw in the reasoning is the first step, which assumes that when Rule 15(a) states that the "agency, board, commission, or officer" whose order is under review "must be named respondent," it means to confer upon such entities (or, in the Court's view, their parent agencies) a party status and litigating power they would not otherwise possess—so that a purely adjudicatory body with no policymaking responsibility, which would otherwise not be a party, is suddenly free to step in (perhaps through its parent) to "defend" its judgment. That is not only an unlikely function for the Federal Rules of Appellate Procedure to perform (and thus an unlikely reading of the language of Rule 15(a), which, contrary to the Court's suggestion, see *ante,* at 266, is far from unambiguous on this point); it is an impermissible function, since it may give appellate courts jurisdiction over a dispute (if it can be called a dispute) that would otherwise be beyond their ken, namely, one in which the victorious private party to the lower court adjudication has no interest in defending it, and only the adjudicator itself (or its parent) appears. That extension of litigation would violate Rule 1(b), which provides that the Federal Rules of Appellate Procedure "shall not be construed to extend or limit the jurisdiction of the courts of appeals as established by law." Fed. Rule App. Proc. 1(b). In the present context, for example, if the victorious employer against whom the employee takes an appeal chooses not to contest it, or ceases to exist while the appeal is pending, the agency's status as a party respondent would permit continued litigation of the appeal. The concern with extending the jurisdiction of the courts of appeals through participation of the Director is more than theoretical; he has in the past sought to continue litigation of claims (at least at the Board level) that the employee and employer preferred not to pursue. *E. g., Ingalls Shipbuilding Div., Litton Systems, Inc.* v. *White,* 681 F. 2d 275, 277 (CA5 1982), overruled on other grounds, *Newpark Shipbuilding & Repair, Inc.* v. *Roundtree,* 723 F. 2d 399, 407 (CA5 1984).

The Court's response to all of this is that concerns about extension of jurisdiction are "not . . . controlling" in this case, since both private parties are participating. *Ante,* at 267. But of course when we interpret a rule of general application, such as Rule 15(a), we are bound to take into account not only the ramifications of our interpretation for the case before us, but also the ramifications for future cases. Indeed, a different approach would make the meaning we ascribe to the general rule turn on the specifics of the case that first raises the issue. For good reason, that is not our practice. Because interpreting Rule 15(a) to make the Director a party would sometimes extend the jurisdiction of the courts of appeals, and because Rule 1(b) requires that the Rule be construed to avoid that result, the Rule should not be given the meaning that today's opinion accords it.

Invoking Rule 15(a) (and, of course, ignoring the identity of the body that issued the order) is the only imaginable basis for concluding that the Director is *always* a proper respondent in the courts of appeals, regardless of the outcome below. There is, however, a respectable argument in support of his respondent status when he *participates* before the Board and *prevails.* That parties in whose favor the judgment under review runs are ordinarily proper respondents or appellees in the courts of appeals is so obvious that the Federal Rules of Appellate Procedure—which, contrary to the Court's belief, purport to prescribe which parties must be named, not who is a party—do not bother to provide for the naming of such individuals. (That is to say, there is no analogue to Rule 15(a) for them.)

But the Director—even assuming he is entitled to participate as a party before the Board, compare 20 CFR § 802.201(a)(1) (1996) (allowing participation) with *Newport News, supra,* at 125–126 ("[T]he [LHWCA] does not by its terms . . . grant [the Director] authority to prosecute appeals to the Board")—is *not* an ordinary prevailing party. An ordinary party in that position would, if he had *lost* below, have the right to prosecute an appeal. The Director, in contrast, has no such power. *Newport News, supra.* This inability to appeal reflects the limited character of the interests of the Director affected by the Board's judgment, which include neither his exposure to financial or other liability, nor nullification of one of his own orders, but only legal or policy disagreement with the Board's decision.* It would be an odd and novel result if the Director, in cases of this nature, could be named as a respondent if he was on the prevailing side below, but could not initiate an appeal if he was on the losing side. I would not reach such a result unless the statute left no choice, which is not the case here.

Finally, I may observe that today's game has really not been worth the candle. The strange and countertextual arrangement that the Court has constructed might perhaps be excused if excluding the Director from party status would do some substantial harm to the scheme of the LHWCA. But it does not. His "significant role" in administering the Act, *ante,* at 262, does not mean that his participation in proceedings before the courts of appeals is essential. As we emphasized in *Newport News,* limits on the Director's ability to participate in the judicial-review process are of relatively minor consequence because his "power to resolve legal ambiguities in the statute" may always be exercised through his rulemaking authority. 514 U. S., at 134. In addition, the Director is guaranteed the right to file an *amicus* brief in the court of appeals, with or without the consent of the parties. Fed. Rule App. Proc. 29.

* * *

I think it plain that the intent of Rule 15(a) is not to restructure the Executive Branch, or to convert Article I courts (or their parent agencies) into litigating arms, but rather simply to require that those agencies *entitled to party status—i. e.,* those that would be entitled to intervene in the appeal under the criteria set forth in Rule 15(d)—must be

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*In my view the Director *is* akin to an ordinary respondent or appellee when he prevails before the Board in his capacity as administrator of the LHWCA special fund established by 33 U. S. C. § 944. In *Newport News,* we left open the question whether the Director has standing to appeal an *adverse* ruling of the Board when he participates in that capacity. 514 U. S., at 125, n. 1.

named as respondents. By making the Rule much more than that, and then flatly misidentifying, through sheer will power, the agency whose "order" is at issue, the Court creates a zany system in which an Executive officer from whom the Board has carefully been made independent, and one who will often disagree with—and perhaps even have argued against—the Board's judgment, will be charged with "defending" that judgment in the court of appeals, where, once arrived, he is free instead to maintain an independent *attack* upon the judgment, even though, as we held in *Newport News,* he would not have been able to launch that attack by appealing on his own. Today's disposition regarding the Director's status is at odds with the relevant provisions of law and creates the potential for disruption of orderly litigation and settlement of disputes between employers and employees. I respectfully dissent from that portion of the judgment.

GENERAL MOTORS CORP. *v.* TRACY, TAX COMMISSIONER OF OHIO

CERTIORARI TO THE SUPREME COURT OF OHIO

No. 95–1232. Argued October 7, 1996—Decided February 18, 1997

Ohio imposes general sales and use taxes on natural gas purchases from all sellers, whether in-state or out-of-state, that do not meet its statutory definition of a "natural gas company." Ohio's state-regulated natural gas utilities (generally termed "local distribution companies" or LDC's) satisfy the statutory definition, but the State Supreme Court has determined that producers and independent marketers generally do not. LDC gas sales thus enjoy a tax exemption inapplicable to gas sales by other vendors. The very possibility of nonexempt gas sales reflects an evolutionary change in the natural gas industry's structure. Traditionally, nearly all sales of natural gas directly to consumers were by LDC's, and were therefore exempt from Ohio's sales and use taxes. As a result of congressional and regulatory developments, however, a new market structure has evolved in which consumers, including large industrial end users, may buy gas from producers and independent marketers rather than from LDC's, and pay pipelines separately for transportation. Indeed, during the tax period in question, petitioner General Motors Corporation (GMC) bought virtually all the gas for its plants from out-of-state independent marketers, rather than from LDC's. Respondent Tax Commissioner applied the general use tax to GMC's purchases, and the State Board of Tax Appeals sustained that action. GMC argued on appeal, *inter alia*, that denying a tax exemption to sales by marketers but not LDC's violates the Commerce and Equal Protection Clauses. The Supreme Court of Ohio initially concluded that the tax regime does not violate the Commerce Clause because Ohio taxes natural gas sales at the same rate for both in-state and out-of-state companies that do not meet the statutory definition of "natural gas company." The court then stepped back to hold, however, that GMC lacked standing to bring a Commerce Clause challenge, and dismissed the equal protection claim as submerged in GMC's Commerce Clause argument.

Held:

1. GMC has standing to raise a Commerce Clause challenge. Cognizable injury from unconstitutional discrimination against interstate commerce does not stop at members of the class against whom a State ultimately discriminates. Customers of that class may also be injured, as in this case where the customer is liable to pay the tax and as a result

presumably pays more for gas purchased from out-of-state producers and marketers. See *Bacchus Imports, Ltd.* v. *Dias*, 468 U. S. 263, 267. Pp. 286–287.

2. Ohio's differential tax treatment of natural gas sales by public utilities and independent marketers does not violate the Commerce Clause. Pp. 287–311.

(a) Congress and this Court have long recognized the value of state-regulated monopoly arrangements for gas sales and distribution directly to local consumers. See, *e. g.*, *Panhandle Eastern Pipe Line Co.* v. *Michigan Pub. Serv. Comm'n*, 341 U. S. 329. Even as congressional and regulatory developments resulted in increasing opportunity for a consumer to choose between gas sold by marketers and gas bundled with state-mandated rights and benefits as sold by LDC's, two things remained the same: Congress did nothing to limit the States' traditional autonomy to authorize and regulate local gas franchises, and those franchises continued to provide bundled gas to the vast majority of consumers who had neither the capacity to buy on the interstate market nor the resilience to forgo the reliability and protection that state regulation provided. To this day, all 50 States recognize the need to regulate utilities engaged in local gas distribution. Pp. 288–297.

(b) Any notion of discrimination under the Commerce Clause assumes a comparison of substantially similar entities. When the allegedly competing entities provide different products, there is a threshold question whether the companies are indeed similarly situated for constitutional purposes. If the difference in products means that the entities serve different markets, and would continue to do so even if the supposedly discriminatory burden were removed, eliminating the burden would not serve the dormant Commerce Clause's fundamental objective of preserving a national market for competition undisturbed by preferential advantages conferred by a State upon its residents or resident competitors. Here, the LDCs' bundled product reflects the demand of a core market—typified by residential customers to whom stability of rate and supply is important—that is neither susceptible to competition by the interstate sellers nor likely to be served except by the regulated natural monopolies that have historically supplied its needs. So far as this noncompetitive market is concerned, competition would not be served by eliminating any tax differential as between sellers, and the dormant Commerce Clause has no job to do. On the other hand, eliminating the tax differential at issue might well intensify competition between LDC's and marketers for the noncaptive market of bulk buyers like GMC, which have no need for bundled protection. Thus, the question here is whether the existence of competition between marketers and LDC's in the noncaptive market requires treating the entities as alike for dormant Commerce Clause purposes. A number of reasons support a decision to give the greater weight to the distinctiveness of the captive market and the LDCs' singular role in serving that market, and hence to treat marketers and LDC's as dissimilar for Commerce Clause purposes. Pp. 297–303.

(c) First and most important, this Court has an obligation to proceed cautiously lest it imperil the LDCs' delivery of bundled gas to the noncompetitive captive market. Congress and the Court have recognized the importance of not jeopardizing service to this market. *Panhandle Eastern Pipe Line Co.* v. *Michigan Pub. Serv. Comm'n, supra.* State regulation of gas sales to consumers serves important health and safety interests in fairly obvious ways, in that requirements of dependable supply and extended credit assure that individual domestic buyers are not frozen out of their houses in the cold months. The legitimate state pursuit of such interests is compatible with the Commerce Clause, *Huron Portland Cement Co.* v. *Detroit,* 362 U. S. 440, 443–444, and such a justification may be weighed in the process of deciding the threshold question addressed here. Second, the Court lacks the expertness and the institutional resources necessary to predict the economic effects of judicial intervention invalidating Ohio's tax scheme on the LDCs' capacity to serve the captive market. See, *e. g., Fulton Corp.* v. *Faulkner,* 516 U. S. 325, 341–342. Thus, the most the Court can say is that modification of Ohio's tax scheme could subject LDC's to economic pressure that in turn could threaten the preservation of an adequate customer base to support continued provision of bundled services to the captive market. Finally, should intervention by the National Government be necessary, Congress has both the power and the institutional competence to decide upon and effectuate any desirable changes in the scheme that has evolved. For a half century Congress has been aware of this Court's conclusion in *Panhandle Eastern Pipe Line Co.* v. *Public Serv. Comm'n of Ind.,* 332 U. S. 507, that the Natural Gas Act of 1938 exempts state regulation of in-state retail gas sales from the dormant Commerce Clause, and since that decision has only reaffirmed the States' power in this regard. Pp. 303–310.

(d) GMC's argument that Ohio's tax regime facially discriminates because the sales and use tax exemption would not apply to sales by out-of-state LDC's is rejected. Ohio courts might extend the challenged exemption to out-of-state utilities if confronted with the question, and this Court does not deem a hypothetical possibility of favoritism to constitute discrimination transgressing constitutional commands. *Associated Industries of Mo.* v. *Lohman,* 511 U. S. 641, 654. Pp. 310–311.

3. Ohio's tax regime does not violate the Equal Protection Clause. The differential tax treatment of LDC and independent marketer sales does not facially discriminate against interstate commerce, and there is unquestionably a rational basis for Ohio's distinction between these two kinds of entities. Pp. 311–312.

73 Ohio St. 3d 29, 652 N. E. 2d 188, affirmed.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, THOMAS, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a concurring opinion, *post,* p. 312. STEVENS, J., filed a dissenting opinion, *post,* p. 313.

Timothy B. Dyk argued the cause for petitioner. With him on the briefs were *Gregory A. Castanias* and *John C. Duffy, Jr.*

Jeffrey S. Sutton, State Solicitor of Ohio, argued the cause for respondent. With him on the brief were *Betty D. Montgomery,* Attorney General, and *Barton A. Hubbard, Robert C. Maier, Paul A. Colbert,* and *Thomas McNamee,* Assistant Attorneys General.*

JUSTICE SOUTER delivered the opinion of the Court.

The State of Ohio imposes its general sales and use taxes on natural gas purchases from all sellers, whether in-state or

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States et al. by *Walter Hellerstein, Carter G. Phillips, Rebecca H. Noecker, Karen L. Pauley, Robin S. Conrad,* and *Jan S. Amundson;* and for the Process Gas Consumers Group et al. by *Jerome B. Libin* and *William H. Penniman.*

Briefs of *amici curiae* urging affirmance were filed for the State of Kansas et al. by *Carla J. Stovall,* Attorney General of Kansas, and *Stephen R. McAllister,* Special Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Daniel E. Lungren* of California, *Richard Blumenthal* of Connecticut, *James E. Ryan* of Illinois, *Frankie Sue Del Papa* of Nevada, *Heidi Heitkamp* of North Dakota, *James S. Gilmore III* of Virginia, and *Darrell V. McGraw, Jr.,* of West Virginia; for the National Association of Regulatory Utility Commissioners by *William Paul Rodgers, Jr.;* and for Columbia Gas of Ohio, Inc., by *Kenneth W. Christman.*

Paull Mines and *Richard D. Pomp* filed a brief for the Multistate Tax Commission as *amicus curiae.*

out-of-state, except regulated public utilities that meet Ohio's statutory definition of a "natural gas company." The question here is whether this difference in tax treatment between sales of gas by domestic utilities subject to regulation and sales of gas by other entities violates the Commerce Clause or Equal Protection Clause of the Constitution. We hold that it does not.

I

During the tax period at issue,[1] Ohio levied a 5% tax on the in-state sales of goods, including natural gas, see Ohio Rev. Code Ann. §§ 5739.02, 5739.025 (Supp. 1990), and it imposed a parallel 5% use tax on goods purchased out-of-state for use in Ohio. See § 5741.02 (1986). Local jurisdictions were authorized to levy certain additional taxes that increased these sales and use tax rates to as much as 7% in some municipalities. See § 5739.025 (Supp. 1990); Reply Brief for Petitioner 13, n. 11.

Since 1935, when Ohio's first sales and use taxes were imposed, the State has exempted natural gas sales by "natural gas compan[ies]" from all state and local sales taxes. § 5739.02(B)(7).[2] Under Ohio law, "[a]ny person . . . [i]s a natural gas company when engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within this state." § 5727.01(D)(4) (1996); see also § 5727.01(E)(4) (Supp. 1990); § 5727.01(E)(8) (1986). It is undisputed that natural gas utilities (generally termed "local distribution companies" or LDC's) located in Ohio satisfy this definition of "natural gas company." The Supreme Court of Ohio has, however, interpreted the statutory term to exclude non-LDC gas sellers, such as producers and independent marketers, see *Chrysler Corp.* v. *Tracy*, 73 Ohio St.

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[1] The natural gas purchases that gave rise to petitioner's challenge were made during the period from October 1, 1986, to June 30, 1990.

[2] The exemption was originally codified at Ohio Gen. Code Ann. § 5546–2(6) (Baldwin 1952). As part of a general recodification in 1953, it was moved to Ohio Rev. Code Ann. § 5739.02(B)(7), where it remains today.

3d 26, 652 N. E. 2d 185 (1995), and the State has accordingly treated their sales as outside the exemption and so subject to the tax.

The very question of such an exclusion, and consequent taxation of gas sales or use, reflects a recent stage of evolution in the structure of the natural gas industry. Traditionally, the industry was divisible into three relatively distinct segments: producers, interstate pipelines, and LDC's. This market structure was possible largely because the Natural Gas Act of 1938 (NGA), 52 Stat. 821, 15 U. S. C. § 717 *et seq.*, failed to require interstate pipelines to offer transportation services to third parties wishing to ship gas. As a result, "interstate pipelines [were able] to use their monopoly power over gas transportation to create and maintain monopsony power in the market for the purchase of gas at the wellhead and monopoly power in the market for the sale of gas to LDCs." Pierce, The Evolution of Natural Gas Regulatory Policy, 10 Nat. Resources & Env't 53, 53–54 (Summer 1995) (hereinafter Pierce). For the most part, then, producers sold their gas to the pipelines, which resold it to utilities, which in turn provided local distribution to consumers. See, *e. g., Associated Gas Distributors* v. *FERC,* 824 F. 2d 981, 993 (CADC 1987), cert. denied, 485 U. S. 1006 (1988); Mogel & Gregg, Appropriateness of Imposing Common Carrier Status on Interstate Natural Gas Pipelines, 4 Energy L. J. 155, 157 (1983).

Congress took a first step toward increasing competition in the natural gas market by enacting the Natural Gas Policy Act of 1978, 92 Stat. 3350, 15 U. S. C. § 3301 *et seq.,* which was designed to phase out regulation of wellhead prices charged by producers of natural gas, and to "promote gas transportation by interstate and intrastate pipelines" for third parties. 57 Fed. Reg. 13271 (1992). Pipelines were reluctant to provide common carriage, however, when doing so would displace their own sales, see *Associated Gas Distributors* v. *FERC, supra,* at 993, and in 1985, the Federal

Energy Regulatory Commission (FERC) took the further step of promulgating Order No. 436, which contained an "open access" rule providing incentives for pipelines to offer gas transportation services, see 50 Fed. Reg. 42408. In 1992, this evolution culminated in FERC's Order No. 636, which required all interstate pipelines to "unbundle" their transportation services from their own natural gas sales and to provide common carriage services to buyers from other sources that wished to ship gas. See 57 Fed. Reg. 13267.

Although FERC did not take the further step of requiring intrastate pipelines to provide local transportation services to ensure that gas sold by producers and independent marketers could get all the way to the point of consumption,[3] under the system of open access to interstate pipelines that had emerged in the mid-1980's "larger industrial end-users" began increasingly to bypass utilities' local distribution networks by "construct[ing] their own pipeline spurs to [interstate] pipeline[s] . . . ." Fagan, From Regulation to Deregulation: The Diminishing Role of the Small Consumer Within the Natural Gas Industry, 29 Tulsa L. J. 707, 723 (1994). Bypass posed a problem for LDC's, since the departure of large end users from the system left the same fixed costs to be spread over a smaller customer base. The State of Ohio consequently took steps in 1986 to keep some income from large industrial customers within the utility system by adopting regulations that allowed industrial end users in Ohio to buy natural gas from producers or independent marketers, pay interstate pipelines for interstate transportation, and pay LDC's for local transportation. See *In re Commis-*

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[3] Section 1(b) of the NGA, 52 Stat. 821, 15 U. S. C. § 717(b), explicitly exempts "local distribution of natural gas" from federal regulation. In addition, the Hinshaw Amendment to the NGA, 15 U. S. C. § 717(c), exempts from FERC regulation intrastate pipelines that operate exclusively in one State and with rates and service regulated by the State. See *ANR Pipeline Co.* v. *FERC,* 71 F. 3d 897, 898, n. 2 (CADC 1995). See also *infra,* at 293.

sion Ordered Investigation of the Availability of Gas Transportation Service Provided by Ohio Gas Distribution Utilities to End-Use Customers, No. 85–800–GA–COI (Ohio Pub. Util. Comm'n, Apr. 15, 1986); see generally Natural Gas Marketing and Transportation Committee, 1990 Annual Report, in Natural Resources Energy and Environmental Law, 1990 Year in Review 57, 91–92, and n. 207 (1991).

This new market structure led to the question whether purchases from non-LDC sellers of natural gas qualified for the state sales tax exemption under Ohio Rev. Code Ann. § 5739.02(B)(7) (Supp. 1990). In *Chrysler Corp.* v. *Tracy,* the Ohio Supreme Court held that they do not. The court reasoned that independent marketers do not "suppl[y]" natural gas as required by § 5727.01(D)(4), because they do "not own or control any physical assets to . . . distribute natural gas." 73 Ohio St. 3d, at 28, 652 N. E. 2d, at 187. This determination of state law led in turn to the case before us now.

During the tax period in question here, petitioner General Motors Corporation (GMC) bought virtually all the natural gas for its Ohio plants from out-of-state marketers, not LDC's.[4] Respondent Tax Commissioner of Ohio applied the State's general use tax to GMC's purchases, and the State Board of Tax Appeals sustained that action. GMC appealed to the Supreme Court of Ohio on two grounds. GMC first contended that its purchases should be exempt from the sales tax because independent marketers fell within the statutory definition of "natural gas company." The State Supreme Court, citing its decision the same day in *Chrysler,* rejected this argument. See *General Motors Corp.* v. *Tracy,* 73 Ohio St. 3d 29, 30, 652 N. E. 2d 188, 189 (1995). GMC also argued that denying the tax exemption to sales by marketers violated the Commerce and Equal Protection Clauses. The Ohio court initially concluded that the State's regime did not violate the Commerce Clause because Ohio taxes sales by "compan[ies] that d[o] not own any production, transportation, or distribution equipment" at the same rate regardless of "whether [the companies sell] natural gas in-state or out-of-state." *Id.*, at 31, 652 N. E. 2d, at 190. The court then stepped back to rule, however, that GMC lacked standing to bring its Commerce Clause challenge:

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[4] App. 156. Pursuant to Ohio's regulations authorizing LDC's to provide local transportation services, GMC took delivery of much of this gas from local utilities. *Id.,* at 156–157.

> "On close inspection, GM actually argues that the commissioner's application burdens out-of-state vendors of natural gas. However, GM is not a member of that class and lacks standing to challenge the constitutionality of this application on that basis; our further comment on this question is inappropriate." *Ibid.*

Finally, the court dismissed GMC's equal protection claim as "submerged in its Commerce Clause argument." *Id.*, at 31–32, 652 N. E. 2d, at 190. We granted GMC's petition for certiorari to address the question of standing as well as the Commerce and Equal Protection Clause issues. 517 U. S. 1118 (1996).

II

The Supreme Court of Ohio held GMC to be without standing to raise this Commerce Clause challenge because the company is not one of the sellers said to suffer discrimination under the challenged tax laws. But cognizable injury from unconstitutional discrimination against interstate commerce does not stop at members of the class against whom a State ultimately discriminates, and customers of that class may also be injured, as in this case where the customer is liable for payment of the tax and as a result presumably pays more for the gas it gets from out-of-state producers and marketers. Consumers who suffer this sort of injury from regulation forbidden under the Commerce Clause satisfy the standing requirements of Article III. See generally *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992).

On similar facts, we held in *Bacchus Imports, Ltd.* v. *Dias,* 468 U. S. 263 (1984), that in-state liquor wholesalers had standing to raise a Commerce Clause challenge to a Hawaii tax regime exempting certain alcohols produced in-state from liquor taxes. Although the wholesalers were not among the class of out-of-state liquor producers allegedly burdened by Hawaii's law, we reasoned that the wholesalers suffered economic injury both because they were directly liable for the tax and because the tax raised the price of their imported goods relative to the exempted in-state beverages. *Id.,* at 267; see also *Fulton Corp.* v. *Faulkner,* 516 U. S. 325 (1996) (in-state stockholder challenged tax regime imposing higher taxes on stock from issuers with out-of-state operations than on stock from purely in-state issuers); *West Lynn Creamery, Inc.* v. *Healy,* 512 U. S. 186 (1994) (in-state milk dealers challenged tax and subsidy scheme discriminating against out-of-state milk producers). *Bacchus* applies with equal force here, and GMC "plainly ha[s] standing to challenge the tax in this Court," *Bacchus Imports* v. *Dias, supra,* at 267. We therefore turn to the merits.

III

A

The negative or dormant implication of the Commerce Clause prohibits state taxation, see, *e. g., Quill Corp.* v. *North Dakota,* 504 U. S. 298, 312–313 (1992), or regulation, see, *e. g., Brown-Forman Distillers Corp.* v. *New York State Liquor Authority,* 476 U. S. 573, 578–579 (1986), that discriminates against or unduly burdens interstate commerce and thereby "imped[es] free private trade in the national marketplace," *Reeves, Inc.* v. *Stake,* 447 U. S. 429, 437 (1980). GMC claims that Ohio's differential tax treatment of natural gas sales by marketers and regulated local utilities constitutes "facial" or "patent" discrimination in violation of the Commerce Clause, and it argues that differences in the nature of the businesses of LDC's and interstate marketers cannot justify Ohio's differential treatment of these in-state and out-of-state entities. Although the claim is not that the Ohio tax scheme distinguishes in express terms between in-state and out-of-state entities, GMC argues that by granting the tax exemption solely to LDC's, which are in fact all located in Ohio, the State has "favor[ed] some in-state commerce while disfavoring all out-of-state commerce," Brief for Petitioner 16. That is, because the favored entities are all located within the State, "the tax exemption did not need to be drafted explicitly along state lines in order to demonstrate its discriminatory design," *Amerada Hess Corp.* v. *Director, Div. of Taxation, N. J. Dept. of Treasury,* 490 U. S. 66, 76 (1989). Assessing these arguments requires an understanding of the historical development of the contemporary retail market for natural gas, to which we referred before and now turn in greater detail.

B

Since before the Civil War, gas manufactured from coal and other commodities had been used for lighting purposes, and of course it was understood that natural gas could be used the same way. See Dorner, Initial Phases of Regulation of the Gas Industry, in 1 Regulation of the Gas Industry §§ 2.03–2.06 (American Gas Assn. 1996) (hereinafter Dorner). By the early years of this century, areas in "proximity to the gas field[s]," *West* v. *Kansas Natural Gas Co.,* 221 U. S. 229, 246 (1911), did use natural gas for fuel, but it was not until the 1920's that the development of high-tensile steel and electric welding permitted construction of high-pressure pipelines to transport natural gas from gas fields for distant consumption at relatively low cost. Pierce 53. By that time, the States' then-recent experiments with free market competition in the manufactured gas and electricity industries had dramatically underscored the need for comprehensive regulation of the local gas market. Companies supplying manufactured gas proliferated in the latter half of the 19th century and, after initial efforts at regulation by statute at the state level proved unwieldy, the States generally left any regulation of the industry to local governments. See Dorner §§ 2.03, 2.04. Many of those municipalities honored the tenets of laissez-faire to the point of permitting multiple gas franchisees to serve a single area and relying on competition to protect the public interest. *Ibid.* The results were both predictable and disastrous, including an initial period of "wasteful competition,"[5] followed by massive consolidation and the threat of monopolistic pricing.[6] The public suffered through essentially the same evolution in the electric industry.[7] Thus, by the time natural gas became a widely marketable commodity, the States had learned from chastening experience that public streets could not be continually torn up to lay competitors' pipes, that investments in parallel delivery systems for different fractions of a local market would limit the value to consumers of any price competition, and that competition would simply give over to monopoly in due course. It seemed virtually an economic necessity for States to provide a single, local franchise with a business opportunity free of competition from any source, within or without the State, so long as the creation of exclusive franchises under state law could be balanced by regulation and the imposition of obligations to the consuming public upon the franchised retailers.

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[5] During this period, "'[t]he public grew weary of the interminable rate wars which were invariably followed by a period of recoupment during which the victorious would attempt to make the price of the battle of the consumers by way of increased rates. Investors suffered heavy losses through the manipulation of fly-by-night paper concerns operating with 'nuisance' franchises. . . . Everybody suffered the inconvenience of city streets being constantly torn up and replaced by installation and relocation of duplicate facilities. The situation in New York City alone, prior to the major gas company consolidations, threatened municipal chaos.'" Dorner § 2.03 (quoting Welch, The Odyssey of Gas—A Record of Industrial Courage, 24 Pub. Utils. Fortnightly 500, 501–502 (1939)).

[6] Reticence was not the order of the day. When, for example, the last two surviving gas companies supplying the citizens of Brooklyn announced their merger in October 1883, they also announced that gas prices would immediately double. Dorner § 2.03.

[7] The electric industry burgeoned following Thomas Edison's patent on the first incandescent electric lamp in 1878. Dorner, Beginnings of the Gas Industry, in 1 Regulation of the Gas Industry § 1.06 (American Gas Assn. 1996). Again, after an initial period of unsuccessful regulation by state statute, States mostly left regulation of the electric industry to municipal or local government. Swartwout, Current Utility Regulatory Practice from a Historical Perspective, 32 Nat. Res. J. 289, 298 (1992). "[M]ultiple franchises were handed out, and duplicative utility systems came into being." *Id.,* at 299. The results were "ruinous and short lived." *Ibid.* For example, 45 mostly overlapping franchises were granted for electric utility operation in Chicago between 1882 and 1905. By 1905, however, a single monopoly entity had emerged from the chaos, and customers ended up paying monopoly prices. *Id.,* at 300.

Almost as soon as the States began regulating natural gas retail monopolies, their power to do so was challenged by interstate vendors as inconsistent with the dormant Commerce Clause. While recognizing the interstate character of commerce in natural gas, the Court nonetheless affirmed the States' power to regulate, as a matter of local concern, all direct sales of gas to consumers within their borders, absent congressional prohibition of such state regulation. See, *e. g., Pennsylvania Gas Co.* v. *Public Serv. Comm'n of N. Y.*, 252 U. S. 23, 28–31 (1920); *Public Util. Comm'n of Kan.* v. *Landon,* 249 U. S. 236, 245–246 (1919). At the same time, the Court concluded that the dormant Commerce Clause prevents the States from regulating interstate transportation or sales for resale of natural gas. See, *e. g., Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 307–310 (1924); *Pennsylvania* v. *West Virginia,* 262 U. S. 553, 596–600, reaffirmed on rehearing, 263 U. S. 350 (1923). See generally *Illinois Natural Gas Co.* v. *Central Ill. Public Service Co.*, 314 U. S. 498, 504–505 (1942) (summarizing prior cases distinguishing between permissible and impermissible state regulation of commerce in natural gas). Thus, the Court never questioned the power of the States to regulate retail sales of gas within their respective jurisdictions. Dorner § 2.06.[8]

When federal regulation of the natural gas industry finally began in 1938, Congress, too, clearly recognized the value of such state-regulated monopoly arrangements for the sale and distribution of natural gas directly to local consumers. Thus, § 1(b) of the NGA, 15 U. S. C. § 717(b), explicitly exempted "local distribution of natural gas" from federal regulation, even as the NGA authorized the Federal Power

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[8] In *Arkansas Elec. Cooperative Corp.* v. *Arkansas Pub. Serv. Comm'n,* 461 U. S. 375 (1983), we rejected the bright-line distinction between wholesale and retail sales drawn by these older cases and concluded that state regulation of wholesale sales of electricity transmitted in interstate commerce is not precluded by the Commerce Clause. Reasoning that utilities should not be insulated from our contemporary dormant Commerce Clause jurisprudence by formalistic judge-made rules, *id.,* at 391, we looked instead to "'the nature of the state regulation involved, the objective of the state, and the effect of the regulation upon the national interest in the commerce,'" *id.,* at 390 (quoting *Illinois Natural Gas Co.* v. *Central Ill. Public Service Co.,* 314 U. S. 498, 505 (1942)), to determine whether States have a sufficient interest in regulating wholesale rates within their borders, and had no problem concluding that States do indeed have such an interest, with the result that state regulation of wholesale rates is not precluded by the Commerce Clause (in the absence of pre-emptive congressional action), *id.,* at 394–395. While the holding of *Arkansas Electric* thereby expanded both the permissible scope of state utility regulation and judicial recognition of the important state interests in such regulation, the reasoning of the case equally implies that state regulation of retail sales is not, as a constitutional matter, immune from our ordinary Commerce Clause jurisprudence, and to the extent that our earlier cases may have implied such immunity they are no longer good law. Nothing in *Arkansas Electric* undermines the earlier cases' recognition of the powerful state interest in regulating sales to domestic consumers buying at retail, however, which we reaffirm here. In addition, *Arkansas Electric* does not disturb the relevance of the wholesale/retail distinction for construing the jurisdictional provisions of statutes such as the NGA, which we discuss immediately below. See *id.,* at 380, and n. 3; see also *Schneidewind* v. *ANR Pipeline Co.,* 485 U. S. 293, 300–301 (1988) ("The NGA confers upon FERC exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce for resale").

Commission (FPC) to begin regulating interstate pipelines. Congress's purpose in enacting the NGA was to fill the regulatory void created by the Court's earlier decisions prohibiting States from regulating interstate transportation and sales for resale of natural gas, while at the same time leaving undisturbed the recognized power of the States to regulate all in-state gas sales directly to consumers. *Panhandle Eastern Pipe Line Co.* v. *Public Serv. Comm'n of Ind.*, 332 U. S. 507, 516–522 (1947). Thus, the NGA "was drawn with meticulous regard for the continued exercise of state power, not to handicap or dilute it in any way," *id.*, at 517–518; "the scheme was one of cooperative action between federal and state agencies" to "protect consumers against exploitation at the hands of natural gas companies," *id.*, at 520 (internal quotation marks omitted); and "Congress' action . . . was an unequivocal recognition of the vital interests of the states and their people, consumers and industry alike, in the regulation of rates and service," *id.*, at 521; see also *Panhandle Eastern Pipe Line Co.* v. *Michigan Pub. Serv. Comm'n*, 341 U. S. 329, 334 (1951) ("Direct sales [of natural gas] for consumptive use were designedly left to state regulation" by the NGA). Indeed, the Court has construed § 1(b) of the NGA as altogether exempting state regulation of in-state retail sales of natural gas from attack under the dormant Commerce Clause:

> "The declaration [in the NGA], though not identical in terms with the one made by the McCarran Act, 59 Stat. 33, 15 U. S. C. § 1011, concerning continued state regulation of the insurance business, is in effect equally clear, in view of the [NGA's] historical setting, legislative history and objects, to show intention for the states to continue with regulation where Congress has not expressly taken over. Cf. *Prudential Ins. Co.* v. *Benjamin*, 328 U. S. 408 [(1946) (upholding discriminatory state taxation of out-of-state insurance companies as authorized

> by the McCarran Act)]." *Panhandle-Indiana, supra,* at 521.

And Congress once again acknowledged the important role of the States in regulating intrastate transportation and distribution of natural gas in 1953 when, in the wake of a decision of this Court permitting the FPC to regulate intrastate gas transportation by LDC's, see *FPC* v. *East Ohio Gas Co.*, 338 U. S. 464 (1950), Congress amended the NGA to "leav[e] jurisdiction" over "companies engaged in the distribution" of natural gas "exclusively in the States, as always has been intended." S. Rep. No. 817, 83d Cong., 1st Sess., 1–2 (1953); see 15 U. S. C. § 717(c).

For 40 years, the complementary federal regulation of the interstate market and congressionally approved state regulation of the intrastate gas trade thus endured unchanged in any way relevant to this case. The resulting market structure virtually precluded competition between LDC's and other potential suppliers of natural gas for direct sales to consumers, including large industrial consumers. The simplicity of this dual system of federal and state regulation began to erode in 1978, however, when Congress first encouraged interstate pipelines to provide transportation services to end users wishing to ship gas,[9] and thereby moved toward providing a real choice to those consumers who were able to buy gas on the open market and were willing to take it free of state-created obligations to the buyer. The upshot of congressional and regulatory developments over the next 15 years was increasing opportunity for a consumer in that class to choose between gas sold by marketers and gas bundled with rights and benefits mandated by state regulators as sold by LDC's. But amidst such changes, two things remained the same throughout the period involved in this case. Congress did nothing to limit the States' traditional autonomy to authorize and regulate local gas franchises, and the local franchised utilities (though no longer guaranteed monopolies as to all natural gas demand) continued to provide bundled gas to the vast majority of consumers who had neither the capacity to buy on the interstate market nor the resilience to forgo the reliability and protection that state regulation provided.

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[9] For a more complete description of these changes in federal regulatory policy, and the relevant modifications of Ohio regulation of local utilities that they prompted, see *supra,* at 283–285.

To this day, all 50 States recognize the need to regulate utilities engaged in local distribution of natural gas.[10]

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[10] Alabama: Ala. Code § 37–4–1(7)(b) (Supp. 1996); see generally §§ 37–1–80 through 37–1–105 (1992 and Supp. 1996); Alaska: Alaska Stat. Ann. §§ 42.05.141, 42.05.291, 42.05.990(4)(D) (1989 and Supp. 1995); see generally §§ 42.05.010–42.05.995; Arizona: Ariz. Rev. Stat. Ann. §§ 40–201.4, 40–203 (1996); see generally §§ 40–201 through 40–495; Arkansas: Ark. Code Ann. §§ 23–1–101(4)(A)(i), 23–4–101 (1987 and Supp. 1995); see generally §§ 23–1–101 through 23–4–637; California: Cal. Pub. Util. Code Ann. §§ 216, 701 (West 1975 and Supp. 1996); see generally §§ 201 through 882 (West 1975 and Supp. 1996), §§ 1001 through 1906 (West 1994 and Supp. 1996); Colorado: Colo. Rev. Stat. §§ 40–1–103(1)(a), 40–3–101 (1993); see generally §§ 40–1–101 through 40–8.5–107 (1993 and Supp. 1996); Connecticut: Conn. Gen. Stat. Ann. §§ 16–1(a)(4), (9), 16–6b (West 1988 and Supp. 1996); see generally §§ 16–1 through 16–50f; Delaware: Del. Code Ann., Tit. 26, § 102(2) (Supp. 1996); see generally Tit. 26, §§ 101 through 511 (1989 and Supp. 1996); District of Columbia: D. C. Code Ann. §§ 43–203, 43–212 (1990); see generally §§ 43–101 through 43–1107 (1990 and Supp. 1996); Florida: Fla. Stat. Ann. §§ 366.02(1), 366.03 (West Supp. 1997); see generally §§ 366.01 through 366.14 (West 1968 and Supp. 1997); Georgia: Ga. Code Ann. § 46–2–20(a) (1992); see generally §§ 46–2–20 through 46–2–94 (1992 and Supp. 1996); Hawaii: Haw. Rev. Stat. Ann. §§ 269–1, 269–6, 269–16 (Michie 1992 and Supp. 1996); see generally §§ 269–1 through 269–32; Idaho: Idaho Code §§ 61–129, 61–501, 61–502 (1994); see generally §§ 61–101 through 61–714; Illinois: Ill. Comp. Stat., ch. 220, §§ 5/3–105, 5/4–101, 5/9–101 (1994); see generally ch. 220, §§ 5/1–101 through 5/10–204; Indiana: Ind. Code §§ 8–1–2–1, 8–1–2–4, 8–1–2–87 (West Supp. 1996); see generally §§ 8–1–2–1 through 8–1–2–127; Iowa: Iowa Code Ann. § 476.1 (West Supp. 1996); see generally §§ 476.1 through 476.66 (West 1991 and Supp. 1996); Kansas: Kan. Stat. Ann. §§ 66–104, 66–1,200 through 66–1,208 (1985 and Supp. 1995); Kentucky: Ky. Rev. Stat. Ann. § 278.010(3)(c) (Baldwin 1992); see generally §§ 278.010 through 278.450; Louisiana: La. Rev.

Ohio's treatment of its gas utilities has been a typical blend of limitation and affirmative obligation. Its natural gas utilities, during the period in question, bore with a variety of

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Stat. Ann. §33:4161 (West 1988); see generally §§33:4161 through 33:4174, 33:4301 through 33:4308, 33:4491 through 33:4496 (West 1988 and Supp. 1996); Maine: Me. Rev. Stat. Ann., Tit. 35–A, §§102, 103, 301 (1988 and Supp. 1996–1997); see generally Tit. 35–A, §§101–1210; Maryland: Md. Ann. Code, Art. 78, §§1, 2(o) (1991); see generally Art. 78, §§1 through 2, 23 through 27A, 51 through 54K, 68 through 88 (1991 and Supp. 1994); Massachusetts: Mass. Gen. Laws §§164:1, 164:93, 164:94 (1994); see generally ch. 164, §§1 through 128; Michigan: Mich. Comp. Laws Ann. §§460.6–460.6b (West 1991 and Supp. 1996–1997); see generally §§460.1 through 460.8; Minnesota: Minn. Stat. Ann. §§216B.02(4), 216B.03 (West 1992); see generally §§216B.01 through 216B.67 (1994 and Supp. 1995); Mississippi: Miss. Code Ann. §§77–3–3(d)(ii), 77–3–5 (1991 and Supp. 1996); see generally §§77–3–1 through 77–3–307; Missouri: Mo. Rev. Stat. §§386.020, 393.130 (1994); see generally §§386.010 through 386.710, 393.010 through 393.770; Montana: Mont. Code Ann. §§69–3–101, 69–3–102, 69–3–201 (1995); see generally §§69–3–101 through 69–3–713; Nebraska: Neb. Rev. Stat. §14–2119 (Supp. 1996); see generally §§19–4601 through 19–4623 (1991 and Supp. 1996); Nevada: Nev. Rev. Stat. Ann. §704.020(2)(a) (1995); see generally §§704.001 through 704.320, 704.755; New Hampshire: N. H. Rev. Stat. Ann. §§362:2, 374:1, 374:2 (1995); see generally §§378:1 through 378:42; New Jersey: N. J. Stat. Ann. §48:2–13 (West Supp. 1996); see generally §§48:2–13 through 48:2–91, 48:9–5 through 48:9–32 (West 1969 and Supp. 1996–1997); New Mexico: N. M. Stat. Ann. §§62–3–3, 62–6–4, 62–8–1 (1993 and Supp. 1996); see generally §§62–1–1 through 62–13–14; New York: N. Y. Pub. Serv. Law §65 (McKinney 1989); see generally §§30 through 52, 64 through 77 (McKinney 1989 and Supp. 1996); North Carolina: N. C. Gen. Stat. §§62–3(23), 62–30 (1989 and Supp. 1996); see generally §§62–1 through 62–171; North Dakota: N. D. Cent. Code §§49–02–01, 49–02–02, 49–04–02 (1978 and Supp. 1995); see generally §§49–02–01 through 49–07–06; Ohio: Ohio Rev. Code Ann. §§4905.03(A)(6), 4905.04, 4905.22 (1991); see generally §§4901.01–4909.99 (Baldwin 1991 and Supp. 1995); Oklahoma: Okla. Stat., Tit. 17, §§15, 152, 160.1 (West 1986 and Supp. 1997); Oregon: Ore. Rev. Stat. §§757.005, 757.020, 756.040 (1991); see generally §§756.010 through 757.991; Pennsylvania: Pa. Stat. Ann., Tit. 66, §§102, 501, 1301 (Purdon 1979 and Supp. 1996–1997); see generally Tit. 66, §§101 through 2107; Rhode Island: R. I. Gen. Laws §§39–1–2(7), 39–1–3(a) (Supp. 1996); see generally §§39–1–1 through 39–2–19 (1990 and Supp. 1996); South Carolina: S. C. Code Ann. §§58–5–10(3), 58–5–210 (1976 and requirements: they had to submit annual forecasts of future supply and demand for gas, Ohio Rev. Code Ann. § 4905.14 (Supp. 1990), comply with a range of accounting, reporting, and disclosure rules, §§ 4905.14, 4905.15 (1977 and Supp. 1990), and get permission from the state Public Utilities Commission to issue securities and even to enter certain contracts, §§ 4905.40, 4905.41, 4905.48. The "just and reasonable" rates to which they were restricted, see §§ 4905.22, 4905.32, 4909.15, 4909.17, included a single average cost of gas, see Ohio Admin. Code 4901:1–14, Ohio Monthly Record (Nov. 1991), together with a limited return on investment.[11]

Supp. 1995); see generally §§ 58–5–10 through 58–5–1070; South Dakota: S. D. Codified Laws §§ 49–34A–1, 49–34A–4, 49–34A–6 (1993 and Supp. 1996); see generally §§ 49–34A–1 through 49–34A–78; Tennessee: Tenn. Code Ann. §§ 65–4–101, 65–5–201 (Supp. 1996); see generally §§ 65–4–101 through 65–5–205 (1993 and Supp. 1996); Texas: Tex. Rev. Civ. Stat. Ann., Art. 6050, § 1(a)(4), Art. 6053 (Vernon Supp. 1996–1997); see generally Arts. 6050 through 6066g (Vernon 1962 and Supp. 1996–1997); Utah: Utah Code Ann. §§ 54–2–1(8), 54–3–1, 54–4–1 (1994 and Supp. 1996); see generally §§ 54–2–1 through 54–4–30; Vermont: Vt. Stat. Ann., Tit. 30, § 215 (1986); Virginia: Va. Code Ann. §§ 56–232, 56–234 (1995); see generally §§ 56–232 through 56–260.1 (1995 and Supp. 1996); Washington: Wash. Rev. Code §§ 80.04.010, 80.28.020 (West 1991 and Supp. 1996–1997); see generally §§ 80.04.010 through 80.04.520, 80.28.010 through 80.28.260; West Virginia: W. Va. Code § 24–2–1 (1992); see generally §§ 24–1–1 through 24–5–1 (1992 and Supp. 1996); Wisconsin: Wis. Stat. Ann. §§ 196.01(5), 196.02, 196.03 (West 1992 and Supp. 1996–1997); see generally §§ 196.01 through 196.98; Wyoming: Wyo. Stat. §§ 37–1–101(a)(vi)(D), 37–2–112 (1996); see generally §§ 37–1–101 through 37–6–107.

[11] Ohio's Amended Substitute House Bill 476, signed into law in 1996, requires the state Public Utilities Commission to exempt certain sales of natural gas and/or related services by an LDC from this rate regulation if the commission finds that the LDC is subject to effective competition with respect to such service and that the customers for such service have reasonably available alternatives, Ohio Rev. Code Ann. § 4929.04, as amended by H. R. 476, § 1, effective Sept. 17, 1996. Although this law had not been enacted at the time of the purchases involved in this case, petitioner contended at oral argument that during the tax period in question here, Ohio permitted some natural gas sales by public utilities at unregulated, negotiated rates, and that those sales were not subject to

The LDC's could not exact "a greater or lesser compensation for any services rendered . . . than [exacted] . . . from any other [customer] for doing a like and contemporaneous service under substantially the same circumstances and conditions." Ohio Rev. Code Ann. § 4905.33 (Supp. 1990).

The State also required LDC's to serve all members of the public, without discrimination, throughout their fields of operations. See, *e. g., Industrial Gas Co.* v. *Public Utilities Comm'n of Ohio*, 135 Ohio St. 408, 21 N. E. 2d 166 (1939). They could not "pick out good portions of a particular territory, serve only select customers under private contract, and refuse service . . . to . . . other users," *id.*, at 413, 21 N. E. 2d, at 168, or terminate service except for reasons defined by statute and by following statutory procedures, Ohio Rev. Code Ann. §§ 4933.12, 4933.121 (Supp. 1990). When serving "human needs" consumers including "residential [and] other customers . . . where the element of human welfare [was] the predominant factor," *In re Commission Ordered Investigation of the Availability of Gas Transportation Service Provided by Ohio Gas Distribution Utilities to End-Use Customers*, No. 85–800–GA–COI (Ohio Pub. Util. Comm'n, Aug. 1, 1989), Ohio LDC's were required to provide a firm backup supply of gas, see *ibid.*, and administer specific protective schemes, as by helping to assure a degree of continued service to low-income customers despite unpaid bills. See, *e. g.*, Ohio Admin. Code 4901:1–18 (Ohio Monthly Record Nov. 1991).

IV

The fact that the local utilities continue to provide a product consisting of gas bundled with the services and protections summarized above, a product thus different from the marketer's unbundled gas, raises a hurdle for GMC's claim

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sales tax. The record provides no support for this contention, and the constitutionality of Ohio exempting from state sales tax utility sales that are not price regulated is therefore not before the Court in this case.

that Ohio's differential tax treatment of natural gas utilities and independent marketers violates our "'virtually *per se* rule of invalidity,'" *Associated Industries of Mo.* v. *Lohman,* 511 U. S. 641, 647 (1994) (quoting *Philadelphia* v. *New Jersey,* 437 U. S. 617, 624 (1978)), prohibiting facial discrimination against interstate commerce.

A

Conceptually, of course, any notion of discrimination[12] assumes a comparison of substantially similar entities. Although this central assumption has more often than not itself remained dormant in this Court's opinions on state discrimination subject to review under the dormant Commerce Clause, when the allegedly competing entities provide different products, as here, there is a threshold question whether the companies are indeed similarly situated for constitutional purposes. This is so for the simple reason that the difference in products may mean that the different entities serve different markets, and would continue to do so even if the supposedly discriminatory burden were removed. If in fact that should be the case, eliminating the tax or other regulatory differential would not serve the dormant Commerce Clause's fundamental objective of preserving a national market for competition undisturbed by preferential advantages conferred by a State upon its residents or resident competitors. In Justice Jackson's now-famous words:

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[12] Although GMC raises only a "facial discrimination" challenge to Ohio's tax scheme, our cases have indicated that even nondiscriminatory state legislation may be invalid under the dormant Commerce Clause, when, in the words of the so-called *Pike* undue burden test, "the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits," *Pike* v. *Bruce Church, Inc.,* 397 U. S. 137, 142 (1970). There is, however, no clear line between these two strands of analysis, *Brown-Forman Distillers Corp.* v. *New York State Liquor Authority,* 476 U. S. 573, 579 (1986), and several cases that have purported to apply the undue burden test (including *Pike* itself) arguably turned in whole or in part on the discriminatory character of the challenged state regulations, see, *e. g., Pike, supra,* at 145 (declaring packing order "virtually *per se* illegal" because it required business operation to be performed in-state); *Kassel* v. *Consolidated Freightways Corp. of Del.,* 450 U. S. 662, 677 (1981) (plurality opinion of Powell, J.) (noting that in adopting invalidated truck-length regulation the State "seems to have hoped to limit the use of its highways by deflecting some through traffic"); *id.,* at 679–687 (Brennan, J., concurring in judgment) (emphasizing that truck-length regulation should be invalidated solely in view of its protectionist purpose); see generally Regan, The Supreme Court and State Protectionism: Making Sense of the Dormant Commerce Clause, 84 Mich. L. Rev. 1091 (1986). Nonetheless, a small number of our cases have invalidated state laws under the dormant Commerce Clause that appear to have been genuinely nondiscriminatory, in the sense that they did not impose disparate treatment on similarly situated in-state and out-of-state interests, where such laws undermined a compelling need for national uniformity in regulation. See *Bibb* v. *Navajo Freight Lines, Inc.,* 359 U. S. 520 (1959) (conflict in state laws governing truck mud flaps); *Southern Pacific Co.* v. *Arizona ex rel. Sullivan,* 325 U. S. 761 (1945) (train lengths); see also *CTS Corp.* v. *Dynamics Corp. of America,* 481 U. S. 69, 88 (1987) ("This Court's recent

> "Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, that no home embargoes will withhold his exports, and no foreign state will by customs duties or regulations exclude them. Likewise, every consumer may look to the free competition from every producing area in the Nation to protect

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Commerce Clause cases also have invalidated statutes that may adversely affect interstate commerce by subjecting activities to inconsistent regulations"); L. Brilmayer, Conflict of Laws §3.2.3, pp. 144–148 (2d ed. 1995) (discussing Court's review of conflicting state laws under the dormant Commerce Clause). In the realm of taxation, the requirement of apportionment plays a similar role by assuring that interstate activities are not unjustly burdened by multistate taxation. See generally *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U. S. 175, 184–185 (1995) (discussing "internal" and "external" consistency tests for apportionment of state taxes). Of course, the fact that Ohio exempts local utilities from its sales and use taxes could not support any claim of undue burden in this nondiscriminatory sense, since the exemption itself does not give rise to conflicting regulation of any transaction or result in malapportionment of any tax.

> him from exploitation by any. Such was the vision of the Founders; such has been the doctrine of this Court which has given it reality." *H. P. Hood & Sons, Inc.* v. *Du Mond,* 336 U. S. 525, 539 (1949).

See also, *e. g., Wyoming* v. *Oklahoma,* 502 U. S. 437, 469 (1992) (SCALIA, J., dissenting) ("Our negative Commerce Clause jurisprudence grew out of the notion that the Constitution implicitly established a national free market . . ."); *Reeves, Inc.* v. *Stake,* 447 U. S., at 437 (The dormant Commerce Clause prevents "state taxes and regulatory measures impeding free private trade in the national marketplace"); *Hunt* v. *Washington State Apple Advertising Comm'n,* 432 U. S. 333, 350 (1977) (referring to "the Commerce Clause's overriding requirement of a national 'common market' "). Thus, in the absence of actual or prospective competition between the supposedly favored and disfavored entities in a single market there can be no local preference, whether by express discrimination against interstate commerce or undue burden upon it, to which the dormant Commerce Clause may apply. The dormant Commerce Clause protects markets and participants in markets, not taxpayers as such.

Our cases have, however, rarely discussed the comparability of taxed or regulated entities as operators in arguably distinct markets; the closest approach to the facts here occurred in *Alaska* v. *Arctic Maid,* 366 U. S. 199 (1961). In *Arctic Maid,* a 4% tax on the value of salmon taken from territorial waters by so-called freezer ships and frozen for transport and later canning outside the State was challenged as discriminatory in the face of a 1% tax on the value of fish taken from territorial waters and frozen by on-shore cold storage facilities for later sale on the domestic fresh-frozen fish market. The State prevailed on the Court's holding that the claimants and cold storage facilities served separate markets, did not compete with one another, and thus could not properly be compared for Commerce Clause purposes. The proper comparison, the Court held, was between the freezer ships and domestic salmon canners, who shipped interstate into the same markets served by the freezer ships. Since the canners were taxed even more heavily than the freezer ships, there was no unfavorable burden upon the latter. *Id.*, at 204. Although the Court's opinion did not discuss the possibility that competition in the domestic fresh-frozen market might have occurred in the absence of the tax disparity between the two types of salmon freezers, the freezer ships had made no attempt to compete in that market and neither claimed nor demonstrated an interest in entering it. See Brief for Respondents in *Alaska* v. *Arctic Maid*, O. T. 1960, No. 106, pp. 27–33.

Arctic Maid provides a partial analogy to this case. Here, natural gas marketers did not serve the Ohio LDCs' core market of small, captive users, typified by residential consumers who want and need the bundled product. See, *e. g.*, Darr, A State Regulatory Strategy for the Transitional Phase of Gas Regulation, 12 Yale J. Reg. 69, 99 (1995) ("[T]he large core residential customer base is bound to the LDC in what currently appears to be a natural-monopoly relationship"); App. 199 (a marketer from which GMC purchased gas does not hold itself out to the general public as a gas supplier, but rather selectively contacts industrial end users that it has identified as potentially profitable customers). While this captive market is not geographically distinguished from the area served by the independent marketers, it is defined economically as comprising consumers who are captive to the need for bundled benefits. These are buyers who live on sufficiently tight budgets to make the stability of rate important, and who cannot readily bear the risk of losing a fuel supply in harsh natural or economic weather. See, *e. g.*, *Consolidated Edison Co. of N. Y.* v. *FERC*, 676 F. 2d 763, 766, n. 5 (CADC 1982) ("[R]esidential users [of natural gas cannot] switch temporarily to other fuels and so they must endure cold homes" if their gas supply is interrupted); Samuels, Reliability of Natural Gas Service for Captive End-Users Under the Federal Energy Regulatory Commission's Order No. 636, 62 Geo. Wash. L. Rev. 718, 749 (1994) ("Gas service disruptions lasting just a few days can cause severe health risks to captive end-users"). They are also buyers without the high volume requirements needed to make investment in the transaction costs of individual purchases on the open market economically feasible. Pierce, Intrastate Natural Gas Regulation: An Alternative Perspective, 9 Yale J. Reg. 407, 409–410 (1992) ("Purchasing gas service [from marketers] requires considerable time and expertise. Its benefits are likely to exceed its costs only for consumers who purchase very large quantities of gas"). The demands of this market historically arose free of any influence of differential taxation (since there was none during the pre-1978 period when only LDC's generally served end users), and because the market's economic characteristics appear to be independent of any effect attributable to the State's sales taxation as imposed today, there is good reason to assume that any pricing changes that could result from eliminating the sales tax differential challenged here would be inadequate to create competition between LDC's and marketers for the business of the utilities' core home market.

On the other hand, one circumstance of this case is unlike what *Arctic Maid* assumed, for there is a possibility of competition between LDC's and marketers for the noncaptive market. Although the record before this Court reveals virtually nothing about the details of that competitive market, in the period under examination it presumably included bulk buyers like GMC, which have no need for bundled protection, see, *e. g.*, State Issue: Atlanta Gas Light Takes Step to Abandon Gas Sales by Unbundling Services for Non-Core Customers, Foster Natural Gas Report, June 20, 1996, p. 22 (indicating that prior to "unbundling" marketers accounted for 80% of sales to large commercial and industrial users in Georgia), and consumers of middling volumes of natural gas who found some value in Ohio's state-imposed protections but not enough to offset lower price at some point, see, *e. g.*, Pierobon, Small Customers: The Yellow Brick Road to Deregulation?, 134 Pub. Utils. Fortnightly, No. 6, pp. 14, 15 (1996) (marketers' efforts in California are increasingly directed to attracting consumers in the "small commercial sector," including "schools, hospitals, hotels, restaurants, laundromats, and master-metered apartments," which currently purchase bundled gas from utilities); Salpukas, New Choices for Natural Gas: Retailers Find Users Puzzled as Industry Deregulates, N. Y. Times, Oct. 23, 1996, pp. D1, D4 (indicating that some natural gas marketers in New York City are attempting to lure "mom-and-pop businesses like restaurants and dry-cleaners" away from LDC's, with mixed success). Eliminating the sales tax differential at issue here might well intensify competition between LDC's and marketers for customers in this noncaptive market.

B

In sum, the LDCs' bundled product reflects the demand of a market neither susceptible to competition by the interstate sellers nor likely to be served except by the regulated natural monopolies that have historically supplied its needs. So far as this market is concerned, competition would not be served by eliminating any tax differential as between sellers, and the dormant Commerce Clause has no job to do. There is, however, a further market where the respective sellers of the bundled and unbundled products apparently do compete and may compete further. Thus, the question raised by this case is whether the opportunities for competition between marketers and LDC's in the noncaptive market requires treating marketers and utilities as alike for dormant Commerce Clause purposes. Should we accord controlling significance to the noncaptive market in which they compete, or to the noncompetitive, captive market in which the local utilities alone operate? Although there is no *a priori* answer, a number of reasons support a decision to give the greater weight to the captive market and the local utilities' singular role in serving it, and hence to treat marketers and LDC's as dissimilar for present purposes. First and most important, we must recognize an obligation to proceed cautiously lest we imperil the delivery by regulated LDC's of bundled gas to the noncompetitive captive market. Second, as a Court we lack the expertness and the institutional resources necessary to predict the effects of judicial intervention invalidating Ohio's tax scheme on the utilities' capacity to serve this captive market. Finally, should intervention by the National Government be necessary, Congress has both the resources and the power to strike the balance between the needs of the competitive and captive markets.

1

Where a choice is possible, as it is here, the importance of traditional regulated service to the captive market makes a powerful case against any judicial treatment that might jeopardize LDCs' continuing capacity to serve the captive market. Largely as a response to the monopolistic shakeout that brought an end to the era of unbridled competition among gas utilities, regulation of natural gas for the principal benefit of householders and other consumers of relatively small quantities is the rule in every State in the Union. Congress has also long recognized the desirability of these state regulatory regimes. *Supra,* at 291–293. Indeed, half a century ago we concluded that the NGA altogether exempts state regulation of retail sales of natural gas (including in-state sales to large industrial customers) from the strictures of the dormant Commerce Clause, see *Panhandle Eastern Pipe Line Co.* v. *Public Serv. Comm'n of Ind.*, 332 U. S. 507 (1947), and to this day, notwithstanding the national regulatory revolution, Congress has done nothing to limit its unbroken recognition of the state regulatory authority that has created and preserved the local monopolies.[13] The clear implication is that Congress finds the benefits of the bundled product for captive local buyers well within the realm of what the States may reasonably promote and preserve.

This Court has also recognized the importance of avoiding any jeopardy to service of the state-regulated captive market, and in circumstances remarkably similar to those of the present case. In *Panhandle Eastern Pipe Line Co.* v. *Michigan Pub. Serv. Comm'n,* 341 U. S. 329 (1951), Ford Motor Company had entered a contract with an interstate pipeline for supply of gas at Ford's plant in Dearborn, Michigan, thus bypassing the local distribution company. The Michigan Public Service Commission ordered the pipeline to cease and desist from making direct sales of natural gas to the State's industrial customers without a certificate of public convenience and necessity, and the pipeline brought a Commerce Clause challenge to the commission's action. The Court observed that

> "[a]ppellant asserts a right to compete for the cream of the volume business without regard to the local public convenience or necessity. Were appellant successful in this venture, it would no doubt be reflected adversely in [the LDC's] over-all costs of service and its rates to customers whose only source of supply is [the LDC]. This clearly presents a situation of . . . vital interest to the State of Michigan." *Id.,* at 334.

In view of the economic threat that competition for large industrial consumers posed to gas service to small captive users, the Court again reaffirmed its longstanding doctrine upholding the States' power to regulate all direct in-state sales to consumers, even if such regulation resulted in an outright prohibition of competition for even the largest end users. *Id.*, at 336–337; see also *Panhandle-Indiana, supra* (upholding state regulation of direct sales to large industrial users as not pre-empted by the NGA or precluded by the dormant Commerce Clause).[14]

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[13] In the present case, the parties have not briefed the question whether the present amended version of the NGA and related federal legislation continues the express Commerce Clause exemption for state regulation and taxation of retail natural gas sales recognized in *Panhandle-Indiana,* and we do not decide this issue. We note, however, that the language of § 1(b) of the NGA, which the *Panhandle-Indiana* Court construed as creating the exemption, itself remains unchanged. (Compare 52 Stat. 821 with 15 U. S. C. § 717(b) (1994).)

The continuing importance of the States' interest in protecting the captive market from the effects of competition for the largest consumers is underscored by the common sense of our traditional recognition of the need to accommodate state health and safety regulation in applying dormant Commerce Clause principles. State regulation of natural gas sales to consumers serves important interests in health and safety in fairly obvious ways, in that requirements of dependable supply and extended credit assure that individual buyers of gas for domestic purposes are not frozen out of their houses in the cold months. We have consistently recognized the legitimate state pursuit of such interests as compatible with the Commerce Clause, which was "'never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country.'" *Huron Portland Cement Co.* v. *Detroit*, 362 U. S.

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[14] Under today's altered market structure, see *supra*, at 283–285, several Courts of Appeals have held that the NGA confers jurisdiction on FERC, rather than the States, to regulate such bypass arrangements for supplying gas to large industrial consumers when the sale of gas itself occurs outside the State and an interstate pipeline merely transports the gas to the industrial consumer for delivery in-state. See *Cascade Natural Gas Corp.* v. *FERC*, 955 F. 2d 1412, 1414–1422 (CA10 1992); *Michigan Consolidated Gas Co.* v. *Panhandle Eastern Pipe Line Co.*, 887 F. 2d 1295, 1299–1301 (CA6 1989), cert. denied, 494 U. S. 1079 (1990); *Michigan Consolidated Gas Co.* v. *FERC*, 883 F. 2d 117, 121–122 (CADC 1989), cert. denied, 494 U. S. 1079 (1990). We express no view on the correctness of these decisions.

440, 443–444 (1960) (quoting *Sherlock* v. *Alling*, 93 U. S. 99, 103 (1876)). Just so may health and safety considerations be weighed in the process of deciding the threshold question whether the conditions entailing application of the dormant Commerce Clause are present.[15]

2

The size of the captive market, its noncompetitive character, the values served by its traditional regulation: all counsel caution before making a choice that could strain the capacity of the States to continue to demand the regulatory benefits that have served the home market of low-volume users since natural gas became readily available. Here we have to assume that any decision to treat the LDC's as similar to the interstate marketers would change the LDCs' position in the noncaptive market in which (we are assuming) they compete, at least at the margins, by affecting the overall size of the LDCs' customer base. As we recognized in *Panhandle*, a change in the customer base could affect the LDCs' ability to continue to serve the captive market where there is no such competition.

To be sure, what in fact would happen as a result of treating the marketers and LDC's alike we do not know. We might assume that eliminating the tax on marketers' sales would leave those sellers stronger competitors in the noncaptive market, especially at the market's boundaries, and that any resulting contraction of the LDCs' total customer base would increase the unit cost of the bundled product. We might also suppose that the State would not respond to our decision by subjecting the LDC's and marketers both to the same sales tax now imposed on marketers alone, since the utilities are already subject to a complicated scheme of property taxation quite different from the tax treatment of the marketers.[16] It seems, in fact, far more likely that eliminating the tax challenged here would portend, among other things, some reduction of the total taxes levied against LDC's, in order to strengthen their position in trying to compete with marketers in the noncaptive market.

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[15] Of course, if a State discriminates against out-of-state interests by drawing geographical distinctions between entities that are otherwise similarly situated, such facial discrimination will be subject to a high level of judicial scrutiny even if it is directed toward a legitimate health and safety goal. See, *e. g., Philadelphia* v. *New Jersey*, 437 U. S. 617, 626–628 (1978); *Dean Milk Co.* v. *Madison*, 340 U. S. 349, 353–354 (1951).

The degree to which these very general suggestions might prove right or wrong, however, is not really significant; the point is simply that all of them are nothing more than suggestions, pointedly couched in terms of assumption or supposition. This is necessarily so, simply because the Court is institutionally unsuited to gather the facts upon which economic predictions can be made, and professionally untrained to make them. See, *e. g., Fulton Corp.* v. *Faulkner,* 516 U. S., at 341–342, and authorities cited therein; Hunter, Federalism and State Taxation of Multistate Enterprises, 32 Emory L. J. 89, 108 (1983) ("It is virtually impossible for a court, with its limited resources, to determine with any degree of accuracy the costs to a town, county, or state of a particular industry"); see also Smith, State Discriminations Against Interstate Commerce, 74 Calif. L. Rev. 1203, 1211 (1986) (noting that "[e]ven expert economists" may have difficulty determining "whether the overall economic benefits and burdens of a regulation favor local inhabitants against outsiders"). We are consequently ill qualified to develop Commerce Clause doctrine dependent on any such predictive judgments, and it behooves us to be as reticent about projecting the effect of applying the Commerce Clause here, as we customarily are in declining to engage in elaborate analysis of real-world economic effects, *Fulton Corp.*, *supra*, at 341–342, or to consider subtle compensatory tax defenses, *Oregon Waste Systems, Inc.* v. *Department of Environmental Quality of Ore.*, 511 U. S. 93, 105 (1994). The most we can say is that modification of Ohio's tax scheme could subject LDC's to economic pressure that in turn could threaten the preservation of an adequate customer base to support continued provision of bundled services to the captive market. The conclusion counsels against taking the step of treating the bundled gas seller like any other, with the consequent necessity of uniform taxation of all gas sales.

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[16] For example, public utilities pay personal property tax on 88% of true value, Ohio Rev. Code Ann. § 5727.111 (1996), while marketers pay personal property tax on 25% of their true value, § 5711.22(D). Public utilities also pay a special tax assessment for the expenses of the Public Utility Commission, § 4905.10 (1991), and for the expenses of the Ohio Consumer Counsel, § 4911.18. Moreover, natural gas utilities must pay a gross receipts tax of 4.75% on gas sales, § 5727.38 (1996), while marketers pay none. Independent marketers, for their part, are subject to a franchise tax, § 5733.01, that does not apply to utilities, § 5733.09(a). Thus, this sales and use tax challenge would not be the last available to marketers and their customers; the franchise tax, which also does not apply to utilities, is presumably next in line.

3

Prudence thus counsels against running the risk of weakening or destroying a regulatory scheme of public service and protection recognized by Congress despite its noncompetitive, monopolistic character. Still less is that risk justifiable in light of Congress's own power and institutional competence to decide upon and effectuate any desirable changes in the scheme that has evolved. Congress has the capacity to investigate and analyze facts beyond anything the Judiciary could match, joined with the authority of the commerce power to run economic risks that the Judiciary should confront only when the constitutional or statutory mandate for judicial choice is clear. See, *e. g.*, *Bush* v. *Lucas*, 462 U. S. 367, 389 (1983) (Congress "may inform itself through factfinding procedures such as hearings that are not available to the courts"). One need not adopt Justice Black's extreme reticence in Commerce Clause jurisprudence to recognize in this instance the soundness of his statement that a challenge like the one before us "call[s] for Congressional investigation, consideration, and action. The Constitution gives that branch of government the power to regulate commerce among the states, and until it acts I think we should enter the field with extreme caution." *Northwest Airlines, Inc.* v. *Minnesota,* 322 U. S. 292, 302 (1944) (concurring opinion). This conclusion applies *a fortiori* here, because for a half century Congress has been aware of our conclusion in *Panhandle Eastern Pipe Line Co.* v. *Public Serv. Comm'n of Ind.,* 332 U. S. 507 (1947), that the NGA exempts state regulation of in-state retail natural gas sales from the dormant Commerce Clause and in the years following that decision has only reaffirmed the power of the States in this regard.

* * *

Accordingly, we conclude that Ohio's regulatory response to the needs of the local natural gas market has resulted in a noncompetitive bundled gas product that distinguishes its regulated sellers from independent marketers to the point that the enterprises should not be considered "similarly situated" for purposes of a claim of facial discrimination under the Commerce Clause. GMC's argument that the State discriminates between regulated local gas utilities and unregulated marketers must therefore fail.

C

GMC also suggests that Ohio's tax regime "facially discriminates" because the State's sales and use tax exemption would not apply to sales by out-of-state LDC's. See, *e. g.,* Reply Brief for Petitioner 2, n. 1. As respondent points out, however, the Ohio courts might well extend the challenged exemption to out-of-state utilities if confronted with the question. Indeed, in *Carnegie Natural Gas Co.* v. *Tracy,* No. 94–K–526 (Ohio Bd. Tax App., Nov. 17, 1995), reported in CCH Ohio Tax Rep. ¶ 402–254, the Ohio Board of Tax Appeals accepted the argument of a Pennsylvania public utility that insofar as the out-of-state utility sold natural gas to Ohio consumers it qualified as a utility under Ohio Rev. Code Ann. §5727.01 and was therefore exempt from the State's corporate franchise tax. Out-of-state public utilities may therefore also qualify for Ohio's sales and use tax exemption. Because "we have never deemed a hypothetical possibility of favoritism to constitute discrimination that transgresses constitutional commands," *Associated Industries of Mo.* v. *Lohman*, 511 U. S., at 654, this argument, too, must be rejected.

V

Finally, GMC claims that Ohio's tax regime violates the Equal Protection Clause by treating LDCs' natural gas sales differently from those of producers and marketers. Once again, the hurdle facing GMC is a high one, since state tax classifications require only a rational basis to satisfy the Equal Protection Clause. See, *e. g., Amerada Hess Corp.* v. *Director, Div. of Taxation, N. J. Dept. of Treasury*, 490 U. S., at 80. Indeed, "in taxation, even more than in other fields, legislatures possess the greatest freedom in classification." *Madden* v. *Kentucky*, 309 U. S. 83, 88 (1940).

It is true, of course, that in some peculiar circumstances state tax classifications facially discriminating against interstate commerce may violate the Equal Protection Clause even when they pass muster under the Commerce Clause. See *Metropolitan Life Ins. Co.* v. *Ward*, 470 U. S. 869, 874–883 (1985).[17] But as we explain in Part IV, *supra*, Ohio's differential tax treatment of LDC and independent marketer sales does not facially discriminate against interstate commerce. And in any event, there is unquestionably a rational basis for Ohio's distinction between these two kinds of entities.

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[17] *Ward* involved an Alabama statute that facially discriminated against interstate commerce by imposing a lower gross premiums tax on in-state than out-of-state insurance companies. The case did not present a Commerce Clause violation only because Congress, in enacting the McCarran-Ferguson Act, 15 U. S. C. §§1011–1015, intended to authorize States to impose taxes that burden interstate commerce in the insurance field. *Ward*, 470 U. S., at 880. We nonetheless invalidated Alabama's classification because "neither of the two purposes furthered by the [statute] . . . is legitimate under the Equal Protection Clause . . . ." *Id.*, at 883.

* * *

We conclude that Ohio's differential tax treatment of public utilities and independent marketers violates neither the Commerce Clause nor the Equal Protection Clause and that petitioner's claims are without merit otherwise. The judgment of the Supreme Court of Ohio is affirmed.

It is so ordered.

JUSTICE SCALIA, concurring.

I join the Court's opinion, which thoroughly explains why the Ohio tax scheme at issue in this case does not facially discriminate against interstate commerce. I write separately to note my continuing adherence to the view that the so-called "negative" Commerce Clause is an unjustified judicial invention, not to be expanded beyond its existing domain. "The historical record provides no grounds for reading the Commerce Clause to be other than what it says—an authorization for Congress to regulate Commerce." *Tyler Pipe Industries, Inc.* v. *Washington State Dept. of Revenue*, 483 U. S. 232, 263 (1987) (SCALIA, J., concurring in part and dissenting in part).

I have previously stated that I will enforce on *stare decisis* grounds a "negative" self-executing Commerce Clause in two situations: (1) against a state law that facially discriminates against interstate commerce, and (2) against a state law that is indistinguishable from a type of law previously held unconstitutional by this Court. *West Lynn Creamery, Inc.* v. *Healy*, 512 U. S. 186, 210 (1994) (opinion concurring in judgment); *Itel Containers Int'l Corp.* v. *Huddleston*, 507 U. S. 60, 78 (1993) (opinion concurring in part and concurring in judgment) (collecting cases). Although petitioner contends that Ohio facially discriminates against interstate commerce with respect to natural gas sales, its argument is based on a novel premise: that private marketers engaged in the sale of natural gas are similarly situated to public utility companies. Nothing in this Court's negative Commerce Clause jurisprudence compels that conclusion. To hold that States must tax gas sales by these two types of entities equally would broaden the negative Commerce Clause beyond its existing scope, and intrude on a regulatory sphere traditionally occupied by Congress and the States.

JUSTICE STEVENS, dissenting.

In Ohio, as in other States, regulated utilities selling natural gas—referred to by the Court as "LDC's"—operate in two markets, one that is monopolistic and one that is competitive.

In the first, they sell a "noncompetitive bundled gas product," *ante*, at 310, to small consumers who have no practical alternative source of supply. The LDCs' dominant position in that market justifies detailed regulation of their activities in order to protect consumers from the risk of exploitation by a seller with monopoly power. See *ante*, at 294–297. The basic purpose of that regulation is to protect consumers, not to subsidize the LDC's.

The second market in which LDC's sell natural gas is a competitive market in which large customers like the General Motors Corporation (GMC) have alternative sources of supply. Although Ohio possesses undoubted power to regulate the activities of all sellers in that market, *Panhandle Eastern Pipe Line Co.* v. *Michigan Pub. Serv. Comm'n*, 341 U. S. 329 (1951), it has not done so in any manner relevant here. The purchasers in this competitive market do not need the protections afforded by the state regulation of the monopolistic market, see *ante*, at 302–303, and the benefits provided by these regulations will thus not affect a competitive consumer's choice of seller. Customers like GMC are not "captive to the need for bundled benefits," *ante,* at 301. Nor do the burdens imposed by the regulations have a significant impact on LDCs' activities within this market. Thus, while the gas sold by LDC's on the competitive market may be subject to the same regulations as the gas sold in the noncompetitive market, the different impact of the regulations on the economic decisions of both consumers and sellers makes it appropriate to characterize all gas sold in that market as "unbundled gas," see *ante,* at 297. Although the physical composition of the gas sold in the two markets is identical, I agree with what I understand the Court to be assuming, namely, that as a matter of economics "bundled gas" and "unbundled gas" should be viewed as different products. See *ante,* at 299, 301–303.

It is not uncommon for a firm with a monopolistic position in one market also to sell a second product in a competitive market. See, *e. g., International Business Machines Corp.* v. *United States,* 298 U. S. 131 (1936). Even regulated monopolies such as electric utilities may distribute goods, such as light bulbs, in a competitive market. See, *e. g., Cantor* v. *Detroit Edison Co.,* 428 U. S. 579 (1976). There is no reason why an LDC might not develop a product line, such as thermostats or gas furnaces, to sell in the competitive market for such products. I do not believe that the fact that the LDC is heavily regulated in the "bundled gas" market would justify granting it a special preference in the market for thermostats or gas furnaces. Nor do I discern a significant relevant difference between competition in "unbundled gas" and competition in thermostats or gas furnaces.

It may well be true that without a discriminatory tax advantage in the competitive market, the LDC's would lose business to interstate competitors and therefore be forced to increase the rates charged to small local consumers. This circumstance may require the States to find new, and nondiscriminatory, methods for accommodating the needs of small consumers for regular and reasonably priced natural gas service. As the Court recognizes, speculation about the "real-world economic effects" of a decision like this one is beyond our institutional competence. See *ante,* at 309. Such speculation is not, therefore, a sufficient justification for a tax exemption that discriminates against interstate commerce. *Bacchus Imports, Ltd.* v. *Dias,* 468 U. S. 263 (1984).

Accordingly, while I agree with Parts II and IV of the Court's opinion, I respectfully dissent from the judgment.

CALIFORNIA DIVISION OF LABOR STANDARDS ENFORCEMENT ET AL. *v.* DILLINGHAM CONSTRUCTION, N. A., INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 95–789. Argued November 5, 1996—Decided February 18, 1997

California requires a public works project contractor to pay its workers the prevailing wage in the project's locale, but allows payment of a lower wage to participants in a state-approved apprenticeship program. After respondent Dillingham Construction subcontracted some of the work on its state contract to respondent Arceo, doing business as Sound Systems Media, the latter entered a collective-bargaining agreement that included an apprenticeship wage scale and provided for affiliation with an apprenticeship committee that ran an unapproved program. Sound Systems Media thereafter relied on that committee for its apprentices, to whom it paid the apprentice wage. Petitioner California Division of Apprenticeship Standards issued a notice of noncompliance to both Dillingham and Sound Systems Media, charging that paying the apprentice wage, rather than the prevailing journeyman wage, to apprentices from an unapproved program violated the state prevailing wage law. Respondents sued to prevent petitioners from interfering with payment under the subcontract, alleging, *inter alia,* that § 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA) pre-empted enforcement of the state law. The District Court granted petitioners summary judgment, but the Ninth Circuit reversed, holding that the apprenticeship program was an "employee welfare benefit plan" under ERISA § 3(1), and that the state law "relate[d] to" the plan and was therefore superseded under § 514(a).

Held: California's prevailing wage law does not "relate to" employee benefit plans, and thus is not pre-empted by ERISA. Pp. 323–334.

(a) A state law "relate[s] to" a covered employee benefit plan for § 514(a) purposes if it (1) has a "connection with" or (2) "reference to" such a plan. *E. g., District of Columbia* v. *Greater Washington Bd. of Trade,* 506 U. S. 125, 129. A law has the forbidden reference where it acts immediately and exclusively upon ERISA plans, as in *Mackey* v. *Lanier Collection Agency & Service, Inc.,* 486 U. S. 825, or where the existence of such plans is essential to its operation, as in, *e. g., Greater Washington Bd. of Trade, supra,* and *Ingersoll-Rand Co.* v. *McClendon,* 498 U. S. 133. To determine whether a state law has a connection with

ERISA plans, this Court looks both to ERISA's objectives as a guide to the scope of the state law that Congress understood would survive, *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 656, and to the nature of the law's effect on ERISA plans, *id.*, at 658–659. Where federal law is said to pre-empt state action in fields of traditional state regulation, this Court assumes that the States' historic police powers are not superseded unless that was Congress' clear and manifest purpose. *E. g.*, *id.*, at 655. Pp. 323–325.

(b) Because it appears that approved apprenticeship programs need not be ERISA plans, the California law does not make "reference to" such plans. On its face, the law seems to allow the lower apprentice wage only to a contractor who acquires apprentices through a "joint apprenticeship committee"—an apprenticeship program sponsored by the collective efforts of management and organized labor. To comport with federal law, the expenses of such a committee must be defrayed out of moneys placed into a separate fund, the existence of which triggers ERISA coverage. However, applicable regulations make clear that the class of apprenticeship program sponsors who may provide approved apprentices under California law is broad enough to include a single employer who defrays the costs of its program out of general assets. An employee benefit program so funded, and *not* paid for through a separate fund, is not an ERISA plan. See, *e. g.*, *Massachusetts* v. *Morash*, 490 U. S. 107, 115. The California law is indifferent to the funding, and, thus, to the ERISA coverage, of apprenticeship programs; accordingly, it makes no "reference to" ERISA plans. Pp. 325–328.

(c) Nor does the California law have a "connection with" ERISA plans. In every relevant respect, that law is indistinguishable from the New York statute upheld in *Travelers*, *supra*. As with the New York statute, the Court discerns no congressional intent to pre-empt the areas of traditional state regulation with which the California law is concerned. 514 U. S., at 661. And, like the New York statute, the California prevailing wage law does not bind ERISA plans—legally or as a practical matter—to anything. It merely provides some measure of economic incentive to apprenticeship programs to comport with the State's apprenticeship standards by authorizing lower wage payments to workers enrolled in approved apprenticeship programs. Cf. *id.*, at 668. This Court could not hold the California law superseded based on so tenuous a relation without doing grave violence to the presumption that Congress does not intend the pre-emption of state laws in traditionally state-regulated areas. Pp. 328–334.

57 F. 3d 712, reversed and remanded.

THOMAS, J., delivered the opinion for a unanimous Court. SCALIA, J., filed a concurring opinion, in which GINSBURG, J., joined, *post*, p. 334.

John M. Rea argued the cause for petitioners. With him on the briefs were *Vanessa L. Holton, Fred D. Lonsdale, Sarah Cohen,* and *H. Thomas Cadell, Jr.*

James A. Feldman argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Days, Deputy Solicitor General Kneedler, J. Davitt McAteer, Allen H. Feldman, Nathaniel I. Spiller,* and *Edward D. Sieger.*

Richard N. Hill argued the cause and filed a brief for respondents.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Washington et al. by *Christine O. Gregoire,* Attorney General of Washington, and *Lynn D. W. Hendrickson* and *Jeff B. Kray,* Assistant Attorneys General, *Dennis C. Vacco,* Attorney General of New York, *Victoria A. Graffeo,* Solicitor General, and *Daniel F. De Vita* and *M. Patricia Smith,* Assistant Attorneys General, *Winston Bryant,* Attorney General of Arkansas, *M. Jane Brady,* Attorney General of Delaware, *Charles F. C. Ruff,* Corporation Counsel for the District of Columbia, *Margery S. Bronster,* Attorney General of Hawaii, *Andrew Ketterer,* Attorney General of Maine, *J. Joseph Curran, Jr.,* Attorney General of Maryland, *Scott Harshbarger,* Attorney General of Massachusetts, *Frank J. Kelley,* Attorney General of Michigan, *Hubert H. Humphrey III,* Attorney General of Minnesota, *Joseph P. Mazurek,* Attorney General of Montana, *Frankie Sue Del Papa,* Attorney General of Nevada, *Deborah T. Poritz,* Attorney General of New Jersey, *Theodore R. Kulongoski,* Attorney General of Oregon, and *Thomas W. Corbett, Jr.,* Attorney General of Pennsylvania; for the American Federation of Labor and Congress of Industrial Organizations et al. by *Jonathan P. Hiatt, Laurence J. Cohen, Terry R. Yellig, Laurence Gold, Marsha S. Berzon,* and *Donald J. Capuano;* for the California Association of the Sheet Metal and Air Conditioning Contractors National Association et al. by *Robert E. Jesinger;* for the Council of State Governments et al. by *Richard Ruda* and *Lee Fennell;* and for the National Electrical Contractors Association, Inc., by *Gary L. Lieber.*

Briefs of *amici curiae* urging affirmance were filed for Associated Builders and Contractors, Inc., et al. by *Mark R. Thierman;* and for Signatory Members of the Coalition to Preserve ERISA Preemption by *Maurice Baskin.*

Briefs of *amici curiae* were filed for the American Association of Retired Persons et al. by *Mary Ellen Signorille, Cathy Ventrell-Monsees,* JUSTICE THOMAS delivered the opinion of the Court.

The State of California requires a contractor on a public works project to pay its workers the prevailing wage in the project's locale. An exception to this requirement permits a contractor to pay a lower wage to workers participating in an approved apprenticeship program. This case presents the question whether the pre-emption provision of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U. S. C. § 1001 *et seq.*, supersedes California's prevailing wage law to the extent that the law prohibits payment of an apprentice wage to an apprentice trained in an unapproved program. We conclude that California's law does not "relate to" employee benefit plans, and thus is not pre-empted.

I

A

Since 1931, the Davis-Bacon Act, 46 Stat. 1494, as amended, 40 U. S. C. §§ 276a to 276a–5, has required that the wages paid on federal public works projects equal wages paid in the project's locale on similar, private construction jobs. California, in 1937, adopted a similar statute, which requires contractors who are awarded public works projects to pay their workers "not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed." Cal. Lab. Code Ann. § 1771 (West 1989). Under both the Davis-Bacon Act and California's prevailing wage law, public works contractors may pay less than the prevailing journeyman wage to apprentices in apprenticeship programs that meet standards promulgated under the National Apprenticeship Act, 50 Stat.

Melvin Radowitz, and *Daniel Feinberg;* for the Associated General Contractors of America, San Diego Chapter, Inc., et al. by *John G. Roberts, Jr.*, *Michael E. Kennedy*, *William G. Jeffery*, and *David P. Wolds;* for the California Apprenticeship Coordinators Association et al. by *James P. Watson;* and for the Chamber of Commerce of the United States et al. by *Timothy B. Dyk*, *Daniel H. Bromberg*, *Stephen A. Bokat*, *Mona C. Zeiberg*, *Jan S. Amundson*, and *Quentin Riegel.*

664, as amended, 29 U. S. C. § 50 (known popularly as the Fitzgerald Act).[1] See 29 CFR § 29.5(b)(5) (1996); Cal. Lab. Code Ann. § 1777.5 (West 1989 and Supp. 1997). In most circumstances, California public works contractors are not obliged to employ apprentices, but if they do, the apprentice wage is only permitted for those apprentices in approved programs.

The federal arbiter of apprenticeship program adequacy is the Bureau of Apprenticeship and Training (BAT), located within the Department of Labor. An apprenticeship program that seeks to provide federal public works contractors with apprentice-wage-eligible apprentices must receive the blessing of either the BAT or a "State Apprenticeship Agency." 29 CFR § 29.3 (1996). Since 1978, California's state apprenticeship agency, the California Apprenticeship Council (CAC), has been authorized under 29 CFR § 29.12 to approve apprenticeship programs for federal purposes. App. 37. California has also charged the CAC with approving apprenticeship programs for purposes of California's prevailing wage statute. See Cal. Lab. Code Ann. § 3071 (West 1989). Pursuant to the Fitzgerald Act, the United States Secretary of Labor has promulgated apprenticeship program standards. 29 CFR § 29.5 (1996). California has adopted its own apprenticeship standards, 8 Cal. Code Regs. § 212 (1996), that are "substantively similar" to the federal standards. *Southern Cal. Chapter of Associated Builders and Contractors, Inc., Joint Apprenticeship Committee* v. *California Apprenticeship Council,* 4 Cal. 4th 422, 434, 841 P. 2d

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[1] The Fitzgerald Act provides: "The Secretary of Labor is authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, [and] to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship . . . ." 29 U. S. C. § 50.

1011, 1017 (1992) *(Southern Cal. ABC)*. The CAC uses its own standards whether approving an apprenticeship program for federal or for state purposes.

An apprenticeship program in California may be sponsored by an individual employer, an individual labor union, a group of employers, a group of labor organizations, or by a joint management-labor venture (a so-called joint apprenticeship committee). See Cal. Lab. Code Ann. § 3075 (West 1989).

B

In the spring of 1987, respondent Dillingham Construction was awarded a public works contract as the general contractor for the construction of the Sonoma County Main Adult Detention Facility. Dillingham subcontracted electronic installation work to respondent Manuel J. Arceo, doing business as Sound Systems Media.

When Sound Systems Media was awarded the subcontract, it was signatory to a collective-bargaining agreement that provided a wage scale for apprentices, and required Sound Systems Media to contribute to a CAC-approved apprenticeship program, the Northern California Sound and Communications Joint Apprenticeship Training Committee.

In May 1988, after work on the project was underway, the existing union withdrew its representation of Sound Systems Media employees. Two months later, Sound Systems Media entered a new collective-bargaining agreement with a different union. That agreement, like the earlier one, included a scale of wages for apprentices and provided for an affiliation with a joint apprenticeship committee, the Electronic and Communications Systems Joint Apprenticeship Training Committee (Electronic and Communications Systems JATC). Sound Systems Media relied on this new committee for its apprentices, to whom it paid the apprentice wage provided in the collective-bargaining agreement. The Electronic and Communications Systems JATC, however, did not seek CAC approval until August 1989 and did not gain approval until October 1990. That approval was not retroactive.

In March 1989, yet another union filed a complaint against Sound Systems Media with petitioner Division of Apprenticeship Standards of the California Department of Industrial Relations. Petitioner issued a notice of noncompliance to both Dillingham Construction and Sound Systems Media, charging that Sound Systems Media had violated Cal. Lab. Code Ann. § 1771 (West 1989) by paying the apprentice wage, rather than the prevailing journeyman wage, to apprentices from a nonapproved program. The County of Sonoma was ordered to withhold certain moneys from Dillingham Construction for the violation.

Respondents filed suit to prevent petitioners from interfering with payment under the subcontract. Their complaint alleged, *inter alia*, that ERISA pre-empted enforcement of the prevailing wage law. Respondents argued that the Electronic and Communications Systems JATC was an "employee welfare benefit plan" within the meaning of ERISA § 3(1), 29 U. S. C. § 1002(1),[2] and that California's prevailing wage statute "relate[d] to" it, and was therefore superseded by ERISA's pre-emption provision, § 514(a), 29 U. S. C. § 1144(a).[3] The District Court agreed that the prevailing wage statute "relate[d] to" ERISA plans, but concluded that pre-emption was forestalled by ERISA's saving clause, § 514(d), 29 U. S. C. § 1144(d).[4] Pre-emption of the prevailing wage statute, the District Court determined, would "impair the purposes of the Fitzgerald Act and its regulations within the meaning of ERISA's savings clause." *Dillingham Constr. N. A., Inc.* v. *County of Sonoma,* 778 F. Supp. 1522, 1530 (ND Cal. 1991).

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[2] Section 3(1) defines an "employee welfare benefit plan" as: "[A]ny plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants . . . (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, *apprenticeship or other training programs*, or day care centers, scholarship funds or prepaid legal services . . . ." 29 U. S. C. § 1002(1) (emphasis added).

[3] The pre-emption clause provides that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title." § 1144(a).

The Court of Appeals for the Ninth Circuit reversed. 57 F. 3d 712 (1995). Agreeing with the District Court, the Ninth Circuit held that the Electronic and Communications Systems JATC was an employee welfare benefit plan and that § 1777.5 "relate[d] to" it. *Id.,* at 718–719. Because California's prevailing wage statute was not an "enforcement mechanism" of the Fitzgerald Act, however, the Ninth Circuit parted company with the District Court and held that § 1777.5 was not preserved by ERISA's saving clause. *Id.,* at 721. The decision of the Court of Appeals accorded with that of the Court of Appeals for the Tenth Circuit in *National Elevator Industry, Inc.* v. *Calhoon,* 957 F. 2d 1555, cert. denied, 506 U. S. 953 (1992). Both decisions conflict—as to whether a state prevailing wage law "relate[s] to" apprenticeship programs, and as to the reach of the saving clause—with that of the Eighth Circuit in *Minnesota Chapter of Associated Builders and Contractors, Inc.* v. *Minnesota Dept. of Labor and Industry,* 47 F. 3d 975 (1995). We granted certiorari, 517 U. S. 1133 (1996), and now reverse.

II

Both lower courts determined, and neither party disputes, that the Electronic and Communications Systems JATC was a "plan, fund, or program [that] was established or is maintained for the purpose of providing for its participants . . .

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[4] ERISA's saving clause provides that "[n]othing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any laws of the United States . . . or any rule or regulation issued under any such law." § 1144(d).

apprenticeship or other training programs." § 3(1), 29 U. S. C. § 1002(1). The question thus presented to us is whether California's prevailing wage statute "relate[s] to" that "employee welfare benefit plan" within the meaning of ERISA's pre-emption clause.

Since shortly after its enactment, we have endeavored with some regularity to interpret and apply the "unhelpful text" of ERISA's pre-emption provision. *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645, 656 (1995). We have long acknowledged that ERISA's pre-emption provision is "clearly expansive." *Id.*, at 655. It has

> "a 'broad scope,' *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U. S. 724, 739 (1985), and an 'expansive sweep,' *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U. S. 41, 47 (1987); and . . . it is 'broadly worded,' *Ingersoll-Rand Co.* v. *McClendon*, 498 U. S. 133, 138 (1990), 'deliberately expansive,' *Pilot Life, supra*, at 46, and 'conspicuous for its breadth,' [*FMC Corp.* v. *Holliday*, 498 U. S. 52, 58 (1990)]." *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 384 (1992).

Our efforts at applying the provision have yielded a two-part inquiry: A "law 'relate[s] to' a covered employee benefit plan for purposes of § 514(a) 'if it [1] has a connection with or [2] reference to such a plan.'" *District of Columbia* v. *Greater Washington Bd. of Trade*, 506 U. S. 125, 129 (1992) (quoting *Shaw* v. *Delta Air Lines, Inc.*, 463 U. S. 85, 96–97 (1983)). Under the latter inquiry, we have held pre-empted a law that "impos[ed] requirements by reference to [ERISA] covered programs," *Greater Washington Bd. of Trade, supra*, at 130–131; a law that specifically exempted ERISA plans from an otherwise generally applicable garnishment provision, *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U. S. 825, 828, n. 2, 829–830 (1988); and a common-law cause of action premised on the existence of an ERISA plan, *Ingersoll-Rand Co.* v. *McClendon,* 498 U. S. 133, 140 (1990). Where a State's law acts immediately and exclusively upon ERISA plans, as in *Mackey,* or where the existence of ERISA plans is essential to the law's operation, as in *Greater Washington Bd. of Trade* and *Ingersoll-Rand,* that "reference" will result in pre-emption.

A law that does not refer to ERISA plans may yet be pre-empted if it has a "connection with" ERISA plans. Two Terms ago, we recognized that an "uncritical literalism" in applying this standard offered scant utility in determining Congress' intent as to the extent of § 514(a)'s reach. *Travelers,* 514 U. S., at 656. Rather, to determine whether a state law has the forbidden connection, we look both to "the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive," *ibid.,* as well as to the nature of the effect of the state law on ERISA plans, *id.,* at 658–659.

As is always the case in our pre-emption jurisprudence, where "federal law is said to bar state action in fields of traditional state regulation, . . . we have worked on the 'assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Id.,* at 655 (quoting *Rice* v. *Santa Fe Elevator Corp.,* 331 U. S. 218, 230 (1947)) (citation omitted).

A

Respondents and several of their *amici* urge us to conclude that § 1777.5 makes "reference to" ERISA plans. Because it seems that approved apprenticeship programs need not necessarily be ERISA plans, we decline to do so.

On its face, § 1777.5 appears to allow the lower apprentice wage only to a contractor who acquires apprentices through a "joint apprenticeship committee"—an apprenticeship program sponsored by the collective efforts of management and organized labor. See Cal. Lab. Code Ann. §§ 3075, 3076 (West 1989). Were this the true extent of the prevailing wage law's reach, respondents' "reference to" argument might be more persuasive. The CAC has, however, promulgated regulations making clear that the class of apprenticeship program sponsors who may provide approved apprentices is broader. See 8 Cal. Code Regs. § 230.1(a) (1992) ("Registered apprentices can only be obtained from the *Apprenticeship Committee* of the craft or trade in the area of the site of the public work" (emphasis added)); *id.*, § 228(c) (defining an apprenticeship committee as "an apprenticeship program sponsor"); Cal. Lab. Code Ann. § 3075 (West 1989) (stating that an "apprenticeship program sponsor may be a joint apprenticeship committee, unilateral management or labor apprenticeship committee, or an individual employer"). An apprenticeship program, it would seem, can be maintained by a single employer, and its costs can be defrayed out of that employer's general assets.

To comport with § 302(c)(6) of the Labor Management Relations Act, 1947, 61 Stat. 157, as amended, 29 U. S. C. § 186(c)(6), the expenses of any *joint* apprenticeship committee must be defrayed out of moneys placed into a separate fund. The existence of that fund triggers ERISA coverage over programs like that of the Electronic and Communications Systems JATC. See ERISA Advisory Op. No. 94–14A (Apr. 20, 1994). But an employee benefit program *not* funded through a separate fund is not an ERISA plan. In *Massachusetts* v. *Morash*, 490 U. S. 107 (1989), we recognized a distinction between vacation benefits paid out of an accumulated fund and those paid out of an employer's general assets. A fund established to pay vacation benefits, we held, constituted an employee welfare benefit plan; the policy at issue in *Morash*, whereby vacation benefits were paid out of general assets, did not. The distinction, we concluded, was compelled by ERISA's object and policy:

> "In enacting ERISA, Congress' primary concern was with the mismanagement of funds accumulated to finance employee benefits and the failure to pay employ-

> ees benefits from accumulated funds. To that end, it established extensive reporting, disclosure, and fiduciary duty requirements to insure against the possibility that the employee's expectation of the benefit would be defeated through poor management by the plan administrator." *Id.*, at 115 (citation and footnote omitted).

Benefits paid out of an employer's general assets presented risks indistinguishable from "the danger of defeated expectations of wages for services performed," a hazard with which ERISA is unconcerned. *Ibid.*

The Secretary has carried this funded/unfunded distinction into areas that are, we think, analogous to that of apprenticeship programs. See, *e. g.*, 29 CFR § 2510.3–1(k) (1994) (scholarship programs paid for out of an employer's general assets are not ERISA plans); § 2510.3–1(b)(3)(iv) (training provided on the job with general assets does not constitute ERISA plan); see also ERISA Advisory Op. No. 94–14A (Apr. 20, 1994) (apprenticeship programs paid for out of trust funds are ERISA plans); ERISA Advisory Op. No. 83–32A (June 21, 1983) (in-house professional development program financed out of general assets is not an ERISA plan). Although none of these regulations specifically answers the question whether an unfunded apprenticeship program is covered by ERISA, they suggest—as does our decision in *Morash*—that it is not.[5]

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[5] We are told that "[m]ost state-approved apprenticeship programs in the construction industry in California appear to be ERISA plans." Brief for United States as *Amicus Curiae* 17, n. 8. Between April and June 1994, California had 175 joint apprenticeship programs and 13 "unilateral" ones. *Ibid.* As noted above, the costs of the joint apprenticeship programs are necessarily defrayed out of separate funds. The Government points out that some of the 13 unilateral programs may also have separate funds. *Ibid.* No party before us has established that *all* programs do. Cf. *The Travelers Ins. Co.* v. *Cuomo*, 14 F. 3d 708, 711 (CA2 1994) (noting that 88% of "non-elderly Americans have private health care insurance through [ERISA] plans"), rev'd by *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645 (1995).

Section 1777.5, then, "functions irrespective of . . . the existence of an ERISA plan." *Ingersoll-Rand Co.*, 498 U. S., at 139. An apprenticeship program meeting the substantive standards set forth in the Fitzgerald Act regulations can be approved whether or not its funding apparatus is of a kind as to bring it under ERISA. See *Southern Cal. ABC,* 4 Cal. 4th, at 429, n. 1, 841 P. 2d, at 1014, n. 1. Section 1777.5 is indifferent to the funding, and attendant ERISA coverage, of apprenticeship programs. Accordingly, California's prevailing wage statute does not make reference to ERISA plans. We turn now to the question whether it nonetheless has a "connection with" such plans.

B

In *Shaw* v. *Delta Air Lines, Inc.*, we held that the New York Human Rights Law, which prohibited "employers from structuring their employee benefit plans in a manner that discriminates on the basis of pregnancy," and New York's Disability Benefits Law, which required "employers to pay employees specific benefits," "relate[d] to" ERISA plans. 463 U. S., at 97. *Shaw* and other of our ERISA pre-emption decisions, see, *e. g., FMC Corp.* v. *Holliday*, 498 U. S. 52 (1990); *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U. S. 504 (1981), presented us with state statutes that "mandated employee benefit structures or their administration"; in those cases, we concluded that these requirements amounted to "connection[s] with" ERISA plans. See *Travelers,* 514 U. S., at 658.

The state law at issue in *Travelers,* our most recent exercise in ERISA pre-emption, stands in considerable contrast. That statute regulated hospital rates, and required hospitals to exact surcharges (ranging from 9% to 24% of the rate set under the statute) from patients whose hospital bills were paid by any of a variety of non-Blue Cross/Blue Shield providers. Because ERISA plans, as might be expected, were predominant among the purchasers of insurance, see Brief for Petitioner in *Travelers*, O. T. 1994, No. 93–1408, p. 1–2, the statute was asserted to run afoul of ERISA's pre-emption provision. The differential rates charged to commercially insured patients and to patients insured by Blue Cross/Blue Shield (collectively "the Blues") made commercial insurance relatively more expensive—and relatively less attractive. The resulting cost variations encouraged insurance purchasers, including ERISA plans, to provide insurance benefits through the Blues. Commercial insurers argued that these cost variations and their resulting economic effects had a "connection with" those ERISA plans, requiring pre-emption of the law that dictated them.

We upheld the statute. The "indirect economic influence" of the surcharge, we noted, did not "bind plan administrators to any particular choice and thus function as a regulation of an ERISA plan itself." 514 U. S., at 659. Nor did the indirect influence of the surcharge "preclude uniform administrative practice or the provision of a uniform interstate benefit package if a plan wishe[d] to provide one." *Id.*, at 660. Indeed, if ERISA were concerned with any state action—such as medical-care quality standards or hospital workplace regulations—that increased costs of providing certain benefits, and thereby potentially affected the choices made by ERISA plans, we could scarcely see the end of ERISA's pre-emptive reach, and the words "relate to" would limit nothing. *Id.*, at 660–661. We also noted that several States regulated hospital charges at the time that ERISA was enacted, and yet neither ERISA's language nor legislative history made any mention of pre-empting these state efforts.[6]

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[6] In fact, the very same Congress that enacted ERISA adopted, a short time later, the National Health Planning and Resources Development Act of 1974 (NHPRDA), Pub. L. 93–641, 88 Stat. 2225, §§ 1–3, repealed by Pub. L. 99–660, title VII, § 701(a), 100 Stat. 3799, which "sought to encourage and help fund state responses to growing health care costs and the widely diverging availability of health services." *Travelers, supra*, at 665. The NHPRDA had in mind a system akin to New York's, and we thought it

We think that, in every relevant respect, California's prevailing wage statute is indistinguishable from New York's surcharge program. At the outset, we note that apprenticeship standards and the wages paid on state public works have long been regulated by the States. As discussed in Part I–A, *supra,* California has required that prevailing wages be paid on its public works projects for nearly as long as Congress has required them to be paid on federal projects, and for more than 40 years prior to the enactment of ERISA. Similarly, California has legislated in the apprenticeship area for the better part of this century. See, *e. g.,* The Shelley-Maloney Apprentice Labor Standards Act, 1939 Cal. Stat. 220, codified at Cal. Lab. Code § 3070 *et seq.* Congress, in the Fitzgerald Act, recognized pre-existing state efforts in regulating apprenticeship programs and apparently expected that those efforts would continue. See 29 U. S. C. § 50 (directing the Secretary of Labor "to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship"); see also H. R. Rep. No. 945, 75th Cong., 1st Sess., 2 (1937).

That the States traditionally regulated these areas would not alone immunize their efforts; ERISA certainly contemplated the pre-emption of substantial areas of traditional state regulation. The wages to be paid on public works projects and the substantive standards to be applied to apprenticeship training programs are, however, quite remote from the areas with which ERISA is expressly concerned— " 'reporting, disclosure, fiduciary responsibility, and the like.' " *Travelers, supra,* at 661 (quoting *Shaw,* 463 U. S., at 98). A reading of § 514(a) resulting in the pre-emption of traditionally state-regulated substantive law in those areas where ERISA has nothing to say would be "unsettling," *Travelers,*

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unlikely that the Congress that enacted ERISA would later have sought to encourage a state program that ERISA would pre-empt.

514 U. S., at 665.[7] Given the paucity of indication in ERISA and its legislative history of any intent on the part of Congress to pre-empt state apprenticeship training standards, or state prevailing wage laws that incorporate them, we are reluctant to alter our ordinary "assumption that the historic police powers of the States were not to be superseded by the Federal Act." *Rice*, 331 U. S., at 230.[8] Accordingly, as in

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[7] In *Travelers*, we were convinced that Congress did not intend preemption of New York's law both by the lack of any positive indication that Congress harbored such an intent, and by indirect evidence—the NHPRDA—that the Congress that enacted ERISA did not intend to supersede state laws like New York's regulation of hospital charges. 514 U. S., at 664–668. We face here a similar absence of positive indications on the part of Congress that apprenticeship or prevailing wage statutes would be superseded. The United States further argues that the Fitzgerald Act is analogous to the NHPRDA: Were we to hold § 1777.5 preempted "[t]hat result 'would leave States without the authority to do just what Congress was expressly trying to induce them to do by enacting the Fitzgerald Act.'" Brief for United States as *Amicus Curiae* 22 (internal quotation marks and brackets omitted). In *Travelers*, we thought it implausible that the Congress that enacted ERISA intended to pre-empt state laws that the same Congress subsequently sought to encourage with the NHPRDA. It is not, however, inconceivable for the ERISA Congress to intend the pre-emption of state statutes resulting from the pre-existing Fitzgerald Act. So, the United States' analogy is not decisive. It does, however, aid our conclusion that Congress' silence on the pre-emption of state statutes that Congress previously sought to foster counsels against pre-emption here.

[8] Respondents and two of their *amici* point to bills introduced in Congress for the purpose, at least in part, of overruling lower court decisions holding prevailing wage statutes like California's pre-empted. See Brief for Respondent 23, Brief for Signatory Members of the Coalition to Preserve ERISA Pre-emption as *Amicus Curiae* 11, and Brief for Associated Builders and Contractors, Inc., et al. as *Amici Curiae* 26–27 (all citing H. R. 1036, 103d Cong., 1st Sess. (1993); S. 1580, 103d Cong., 1st Sess. (1993)). It is argued that Congress' unwillingness to amend § 514(a) in response to these decisions is evidence that Congress believed that those opinions accurately interpreted ERISA's pre-emptive scope. We have rejected similar arguments before. See *Firestone Tire & Rubber Co.* v.

Travelers, we address the substance of the California statute with the presumption that ERISA did not intend to supplant it.

Like New York's surcharge requirement, the apprenticeship portion of the prevailing wage statute does not bind ERISA plans to anything. No apprenticeship program is required by California law to meet California's standards. See *Southern Cal. ABC,* 4 Cal. 4th, at 428, 841 P. 2d, at 1013. If a contractor chooses to hire apprentices for a public works project, it need not hire them from an approved program (although if it does not, it must pay these apprentices journeyman wages). So, apprenticeship programs that have not gained CAC approval may still supply public works contractors with apprentices. Unapproved apprenticeship programs also may supply apprentices to private contractors.[9] The effect of § 1777.5 on ERISA apprenticeship programs, therefore, is merely to provide some measure of economic incentive to comport with the State's requirements, at least to the extent that those programs seek to provide apprentices who can work on public works projects at a lower wage.

Apprenticeship programs have confronted these differential economic incentives since well before the enactment of ERISA, and would face them today even if California had no prevailing wage statute. To supply apprentices eligible for the apprenticeship wage to *federal* public works contractors, an apprenticeship program must meet the standards promulgated by California under the Fitzgerald Act.[10] What is

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Bruch, 489 U. S. 101, 114 (1989); *United States* v. *Price,* 361 U. S. 304, 313 (1960) ("[T]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one").

[9] In New York, we are told, "approximately half of all construction is not subject to state or federal prevailing wage requirements." Brief for State of Washington et al. as *Amici Curiae* 21, n. 14 (citing F. W. Dodge Division, McGraw-Hill Information Systems, Inc. (1996)).

[10] It may also be that, because California's standards are "substantively similar," *Southern California ABC,* 4 Cal. 4th, at 434, 841 P. 2d, at 1017, to the federal standards, multistate apprenticeship programs are not

more, with or without the possibility of being able to provide apprentices eligible for a lower wage on public projects, apprenticeship programs in California have other incentives to seek CAC approval. See *Southern Cal. ABC, supra,* at 429, 841 P. 2d, at 1013 ("In California, additional financial incentives exist in the form of direct financial subsidies for training provided by approved programs," and because "an apprentice who completes an approved training program obtains a certificate of completion naming him or her a skilled journeyman in the chosen trade"). It cannot be gainsaid that § 1777.5 has the effect of encouraging apprenticeship programs—including ERISA plans—to meet the standards set out by California, but it has not been demonstrated here that the added inducement created by the wage break available on state public works projects is tantamount to a compulsion upon apprenticeship programs.[11]

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saddled with "the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government." *Ingersoll-Rand Co.* v. *McClendon,* 498 U. S. 133, 142 (1990). Then again, the area of apprenticeship training may be one where uniformity of substantive standards across States is impossible. See Brief for United States as *Amicus Curiae* 20 ("[P]revailing wages in different States—or even in different areas of a single State—may vary substantially, and training requirements for membership in skilled trades may also vary among different trades, different communities, and different States"). We need not resolve this question. Suffice it to say that the federal and state apprenticeship standards are not mandatory, and California's standards do not result in disuniformities different in kind from those that would exist without them.

[11] It is not conclusive as to California's apprenticeship programs, but we note that some data support the conclusion that the prevailing wage break for approved apprenticeship programs does not present ERISA plans with a Hobson's choice. *Amici* State of Washington et al. inform us that "[w]hile the federal government and twenty-seven of the thirty-one states which have prevailing wage laws have [a wage break], it is estimated that only fifty percent of apprentices in this country are in state or federally 'approved' programs." Brief for State of Washington et al. as *Amici Curiae* 20, and n. 13.

The effect of the prevailing wage statute on ERISA-covered apprenticeship programs in California is substantially similar to the effect of New York law on ERISA plans choosing whether to provide health insurance benefits in New York through the Blues, or through a commercial carrier. The prevailing wage statute alters the incentives, but does not dictate the choices, facing ERISA plans. In this regard, it is "no different from myriad state laws in areas traditionally subject to local regulation, which Congress could not possibly have intended to eliminate." *Travelers*, 514 U. S., at 668. We could not hold pre-empted a state law in an area of traditional state regulation based on so tenuous a relation without doing grave violence to our presumption that Congress intended nothing of the sort. We thus conclude that California's prevailing wage laws and apprenticeship standards do not have a "connection with," and therefore do not "relate to," ERISA plans.[12]

III

For the reasons stated herein, the judgment below is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, with whom JUSTICE GINSBURG joins, concurring.

Since ERISA was enacted in 1974, this Court has accepted certiorari in, and decided, no less than 14 cases to resolve conflicts in the Courts of Appeals regarding ERISA pre-emption of various sorts of state law.[1] The rate of acceptance, moreover, has not diminished (we have taken two more ERISA pre-emption cases so far this Term),[2] suggesting that our prior decisions have not succeeded in bringing clarity to the law.

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[12] Because we determine that § 1777.5 does not "relate to" ERISA plans, we need not determine whether ERISA's saving clause, § 514(d), 29 U. S. C. § 1144(d), nonetheless forestalls pre-emption.

[1] In addition to the case at bar, the Court has addressed the application of ERISA's pre-emption provision in the following cases: *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U. S. 645 (1995); *John Hancock Mut. Life Ins. Co.* v. *Harris Trust and Sav.*

I join the Court's opinion today because it is a fair description of our prior case law, and a fair application of the more recent of that case law. Today's opinion is no more likely than our earlier ones, however, to bring clarity to this field—precisely because it does obeisance to all our prior cases, instead of acknowledging that the criteria set forth in some of them have in effect been abandoned. Our earlier cases sought to apply faithfully the statutory prescription that state laws are pre-empted "insofar as they . . . relate to any employee benefit plan." Hence the many statements, repeated today, to the effect that the ERISA pre-emption provision has a "broad scope," an "expansive sweep," is "broadly worded," "deliberately expansive," and "conspicuous for its breadth." *Ante,* at 324. But applying the "relate to" provision according to its terms was a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else. Accord, *New York State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.,* 514 U. S. 645, 655 (1995). The statutory text provides an illusory test, unless the Court is willing to decree a

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Bank, 510 U. S. 86 (1993); *District of Columbia* v. *Greater Washington Bd. of Trade,* 506 U. S. 125 (1992); *Ingersoll-Rand Co.* v. *McClendon,* 498 U. S. 133 (1990); *FMC Corp.* v. *Holliday,* 498 U. S. 52 (1990); *Massachusetts* v. *Morash,* 490 U. S. 107 (1989); *Mackey* v. *Lanier Collection Agency & Service, Inc.,* 486 U. S. 825 (1988); *Fort Halifax Packing Co.* v. *Coyne,* 482 U. S. 1 (1987); *Metropolitan Life Ins. Co.* v. *Taylor,* 481 U. S. 58 (1987); *Pilot Life Ins. Co.* v. *Dedeaux,* 481 U. S. 41 (1987); *Metropolitan Life Ins. Co.* v. *Massachusetts,* 471 U. S. 724 (1985); *Shaw* v. *Delta Air Lines, Inc.,* 463 U. S. 85 (1983); and *Alessi* v. *Raybestos-Manhattan, Inc.,* 451 U. S. 504 (1981).

[2] See *Boggs* v. *Boggs,* cert. granted, *post,* p. 957; *De Buono* v. *NYSA–ILA Medical and Clinical Services Fund,* cert. granted, *post,* p. 926.

degree of pre-emption that no sensible person could have intended—which it is not.

I think it would greatly assist our function of clarifying the law if we simply acknowledged that our first take on this statute was wrong; that the "relate to" clause of the pre-emption provision is meant, not to set forth a *test* for pre-emption, but rather to identify the field in which ordinary *field pre-emption* applies—namely, the field of laws regulating "employee benefit plan[s] described in section 1003(a) of this title and not exempt under section 1003(b) of this title," 29 U. S. C. § 1144(a). Our new approach to ERISA pre-emption is set forth in *John Hancock Mut. Life Ins. Co.* v. *Harris Trust and Sav. Bank*, 510 U. S. 86, 99 (1993): "[W]e discern no solid basis for believing that Congress, when it designed ERISA, intended fundamentally to alter traditional pre-emption analysis." I think it accurately describes our current ERISA jurisprudence to say that we apply ordinary field pre-emption, and, of course, ordinary conflict pre-emption. See generally *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238, 248 (1984) (explaining general principles of field and conflict pre-emption); *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947) (field pre-emption); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U. S. 132, 142–143 (1963) (conflict pre-emption). Nothing more mysterious than that; and except as establishing that, "relates to" is irrelevant.

ROBINSON *v.* SHELL OIL CO.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 95–1376. Argued November 6, 1996—Decided February 18, 1997

After he was fired by respondent, petitioner filed an employment discrimination charge with the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act of 1964. While that charge was pending, petitioner applied for a job with another company, which contacted respondent for an employment reference. Claiming that respondent gave him a negative reference in retaliation for his having filed the EEOC charge, petitioner filed suit under § 704(a) of Title VII, which makes it unlawful "for an employer to discriminate against any of his employees or applicants for employment" who have availed themselves of Title VII's protections. The District Court dismissed the action, and the en banc Fourth Circuit affirmed, holding that the term "employees" in § 704(a) refers only to current employees and therefore petitioner's claim was not cognizable under Title VII.

Held: Because the term "employees," as used in § 704(a) of Title VII, includes former employees, petitioner may sue respondent for its allegedly retaliatory postemployment actions. Pp. 340–346.

(a) Consideration of the statutory language, the specific context in which it is used, and the broader context of Title VII as a whole leads to the conclusion that the term "employees" in § 704(a) is ambiguous as to whether it excludes former employees. First, there is no temporal qualifier in § 704(a) such as would make plain that it protects only persons still employed at the time of the retaliation. Second, § 701(f)'s general definition of "employee" likewise lacks any temporal qualifier and is consistent with either current or past employment. Third, a number of other Title VII provisions, including §§ 706(g)(1), 717(b), and 717(c), use the term "employees" to mean something more inclusive or different from "current employees." That still other sections use the term to refer unambiguously to a current employee, see, *e. g.*, §§ 703(h), 717(b), at most demonstrates that the term may have a plain meaning in the context of a particular section—not that it has the same meaning in all other sections and in all other contexts. Once it is established that "employees" includes former employees in some sections, but not in others, the term standing alone is necessarily ambiguous and each section must be analyzed to determine whether the context gives the term a definite meaning. Pp. 340–345.

(b) A holding that former employees are included within § 704(a)'s coverage is more consistent with the broader context provided by other Title VII sections and with § 704(a)'s primary purpose of maintaining unfettered access to Title VII's remedial mechanisms. As noted, several sections of the statute plainly contemplate that former employees will make use of Title VII's remedial mechanisms. These include § 703(a), which prohibits discriminatory "discharge." Insofar as § 704(a) expressly protects employees from retaliation for filing a "charge," and a charge under § 703(a) alleging unlawful discharge would necessarily be brought by a former employee, it is far more consistent to include former employees within the scope of "employees" protected by § 704(a). This interpretation is supported by the arguments of petitioner and the EEOC that exclusion of former employees from § 704(a) would undermine Title VII's effectiveness by allowing the threat of postemployment retaliation to deter victims of discrimination from complaining to the EEOC, and would provide a perverse incentive for employers to fire employees who might bring Title VII claims. Pp. 345–346.

70 F. 3d 325, reversed.

THOMAS, J., delivered the opinion for a unanimous Court.

Allen M. Lenchek argued the cause for petitioner. With him on the briefs were *Eric Schnapper*, *Elaine R. Jones*, *Theodore M. Shaw*, *Norman J. Chachkin*, and *Charles Stephen Ralston*.

Paul R. Q. Wolfson argued the cause for the United States et al. as *amici curiae* urging reversal. With him on the brief were *Solicitor General Days*, *Assistant Attorney General Patrick*, *Deputy Solicitor General Bender*, *C. Gregory Stewart*, and *Gwendolyn Young Reams*.

L. Chris Butler argued the cause for respondent. With him on the brief was *Patricia McHugh Lambert*.*

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*Briefs of *amici curiae* urging reversal were filed for the Lawyers' Committee for Civil Rights Under Law et al. by *Paul C. Saunders*, *Marc L. Fleischaker*, *Norman Redlich*, *Barbara R. Arnwine*, *Thomas J. Henderson*, *Richard T. Seymour*, *Teresa A. Ferrante*, *Cathy Ventrell-Monsees*, *Dennis Courtland Hayes*, *Judith H. Lichtman*, *Donna R. Lenhoff*, *Helen*

JUSTICE THOMAS delivered the opinion of the Court.

Section 704(a) of Title VII of the Civil Rights Act of 1964 makes it unlawful "for an employer to discriminate against any of his employees or applicants for employment" who have either availed themselves of Title VII's protections or assisted others in so doing. 78 Stat. 257, as amended, 42 U. S. C. §2000e–3(a). We are asked to decide in this case whether the term "employees," as used in §704(a), includes former employees, such that petitioner may bring suit against his former employer for postemployment actions allegedly taken in retaliation for petitioner's having filed a charge with the Equal Employment Opportunity Commission (EEOC). The United States Court of Appeals for the Fourth Circuit, sitting en banc, held that the term "employees" in §704(a) referred only to current employees and therefore petitioner's claim was not cognizable under Title VII. We granted certiorari, 517 U. S. 1154 (1996), and now reverse.

I

Respondent Shell Oil Co. fired petitioner Charles T. Robinson, Sr., in 1991. Shortly thereafter, petitioner filed a charge with the EEOC, alleging that respondent had discharged him because of his race. While that charge was pending, petitioner applied for a job with another company. That company contacted respondent, as petitioner's former employer, for an employment reference. Petitioner claims that respondent gave him a negative reference in retaliation for his having filed the EEOC charge.

L. Norton, Stephen R. Shapiro, Sara L. Mandelbaum, and *Martha F. Davis;* and for the National Employment Lawyers Association by *Douglas A. Hedin* and *Robert Belton.*

Briefs of *amici curiae* urging affirmance were filed for the Equal Employment Advisory Council by *Robert E. Williams* and *Ann Elizabeth Reesman;* and for the Washington Legal Foundation by *J. Thomas Kilpatrick, Daniel J. Popeo,* and *Paul D. Kamenar.*

Petitioner subsequently sued under § 704(a), alleging retaliatory discrimination. On respondent's motion, the District Court dismissed the action, adhering to previous Fourth Circuit precedent holding that § 704(a) does not apply to former employees. Petitioner appealed, and a divided panel of the Fourth Circuit reversed the District Court. The Fourth Circuit granted rehearing en banc, vacated the panel decision, and thereafter affirmed the District Court's determination that former employees may not bring suit under § 704(a) for retaliation occurring after termination of their employment. 70 F. 3d 325 (1995).

We granted certiorari in order to resolve a conflict among the Circuits on this issue.[1]

II

A

Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Our inquiry must cease if the statutory language is unambiguous and "the statutory scheme is coherent and consistent." *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235, 240 (1989); see also *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253–254 (1992).

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[1] The other Courts of Appeals to have considered this issue have held that the term "employees" in § 704(a) does include former employees. See *Charlton* v. *Paramus Bd. of Educ.*, 25 F. 3d 194, 198–200 (CA3), cert. denied, 513 U. S. 1022 (1994); *Bailey* v. *USX Corp.*, 850 F. 2d 1506, 1509 (CA11 1988); *O'Brien* v. *Sky Chefs, Inc.*, 670 F. 2d 864, 869 (CA9 1982), overruled on other grounds by *Atonio* v. *Wards Cove Packing Co.*, 810 F. 2d 1477, 1481–1482 (CA9 1987) (en banc); *Pantchenko* v. *C. B. Dolge Co.*, 581 F. 2d 1052, 1055 (CA2 1978); *Rutherford* v. *American Bank of Commerce*, 565 F. 2d 1162, 1165 (CA10 1977). The Fourth Circuit indicated that it joined the approach taken by the Seventh Circuit in *Reed* v. *Shepard*, 939 F. 2d 484, 492–493 (1991). But the Seventh Circuit has since repudiated the Fourth Circuit's view of *Reed*. See *Veprinsky* v. *Fluor Daniel, Inc.*, 87 F. 3d 881, 886 (1996).

The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole. *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469, 477 (1992); *McCarthy* v. *Bronson*, 500 U. S. 136, 139 (1991). In this case, consideration of those factors leads us to conclude that the term "employees," as used in § 704(a), is ambiguous as to whether it excludes former employees.

At first blush, the term "employees" in § 704(a) would seem to refer to those having an existing employment relationship with the employer in question. Cf. *Walters* v. *Metropolitan Ed. Enterprises, Inc.*, *ante*, at 207–208 (interpreting the term "employees" in § 701(b), 42 U. S. C. § 2000e(b)). This initial impression, however, does not withstand scrutiny in the context of § 704(a). First, there is no temporal qualifier in the statute such as would make plain that § 704(a) protects only persons still employed at the time of the retaliation. That the statute could have expressly included the phrase "former employees" does not aid our inquiry. Congress also could have used the phrase "current employees." But nowhere in Title VII is either phrase used—even where the specific context otherwise makes clear an intent to cover current or former employees.[2] Similarly, that other statutes have been more specific in their coverage of "employees" and

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[2] Our recent decision in *Walters* v. *Metropolitan Ed. Enterprises, Inc.*, *ante*, p. 202, held that the term "employees" in § 701(b), 42 U. S. C. § 2000e(b), referred to those persons with whom an employer has an existing employment relationship. See *ante*, at 207–208. But § 701(b) has two significant temporal qualifiers. The provision, which delimits Title VII's coverage, states that the Act applies to any employer "who *has* fifteen or more employees *for each working day* in each of twenty or more calendar weeks in the current or preceding calendar year." 42 U. S. C. § 2000e(b) (emphasis added). The emphasized words specify the time frame in which the employment relationship must exist, and thus the specific context of that section did not present the particular ambiguity at issue in the present case.

"former employees," see, *e. g.*, 2 U. S. C. § 1301(4) (1994 ed., Supp. I) (defining "employee" to include "former employee"); 5 U. S. C. § 1212(a)(1) (including "employees, former employees, and applicants for employment" in the operative provision), proves only that Congress *can* use the unqualified term "employees" to refer only to current employees, not that it did so in this particular statute.

Second, Title VII's definition of "employee" likewise lacks any temporal qualifier and is consistent with either current or past employment. Section 701(f) defines "employee" for purposes of Title VII as "an individual employed by an employer." 42 U. S. C. § 2000e(f). The argument that the term "employed," as used in § 701(f), is commonly used to mean "[p]erforming work under an employer-employee relationship," Black's Law Dictionary 525 (6th ed. 1990), begs the question by implicitly reading the word "employed" to mean "*is* employed." But the word "employed" is not so limited in its possible meanings, and could just as easily be read to mean "*was* employed."

Third, a number of other provisions in Title VII use the term "employees" to mean something more inclusive or different from "current employees." For example, §§ 706(g)(1) and 717(b) both authorize affirmative remedial action (by a court or EEOC, respectively) "which may include . . . reinstatement or hiring of employees." 42 U. S. C. §§ 2000e–5(g)(1) and 2000e–16(b). As petitioner notes, because one does not "reinstat[e]" current employees, that language necessarily refers to former employees. Likewise, one may hire individuals *to be* employees, but one does not typically hire persons who already *are* employees.

Section 717(b) requires federal departments and agencies to have equal employment opportunity policies and rules, "which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder." 42 U. S. C. § 2000e–16(b). If the complaint involves discriminatory discharge, as it often does, the "employee" who must be notified is necessarily a former employee. Similarly, § 717(c) provides that an "employee or applicant for employment, if aggrieved by the final disposition of his complaint, . . . may file a civil action . . . ." 42 U. S. C. § 2000e–16(c). Again, given that discriminatory discharge is a forbidden "personnel actio[n] affecting employees," see § 717(a), 42 U. S. C. § 2000e–16(a), the term "employee" in § 717(c) necessarily includes a former employee. See *Loeffler* v. *Frank*, 486 U. S. 549 (1988) (involving a discriminatory discharge action successfully brought under § 717 by a former Postal Service employee).[3]

Of course, there are sections of Title VII where, in context, use of the term "employee" refers unambiguously to a current employee, for example, those sections addressing salary or promotions. See § 703(h), 42 U. S. C. § 2000e–2(h) (allowing different standards of compensation for "employees who work in different locations"); § 717(b), 42 U. S. C. § 2000e–16(b) (directing federal agencies to establish a plan "to provide a maximum opportunity for employees to advance so as to perform at their highest potential").

But those examples at most demonstrate that the term "employees" may have a plain meaning in the context of a particular section—not that the term has the same meaning in all other sections and in all other contexts. Once it is established that the term "employees" includes former employees in some sections, but not in others, the term standing alone is necessarily ambiguous and each section must be analyzed to determine whether the context gives the term a further meaning that would resolve the issue in dispute.[4]

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[3] Other sections also seem to use the term "employees" to mean something other than current employees. Section 701(c) defines "employment agency" as "any person regularly undertaking . . . to procure employees for an employer or to procure for employees opportunities to work for an employer . . . ." 42 U. S. C. § 2000e(c). This language most naturally is read to mean "prospective employees." Section 701(e) uses identical language when providing that a labor organization affects commerce if it "operates a hiring hall or hiring office which procures employees for an employer . . . ." 42 U. S. C. § 2000e(e).

Respondent argues that the addition of the word "his" before "employees" narrows the scope of the provision. Brief for Respondent 19. That argument is true, so far as it goes, but it does not resolve the question before us—namely, in what time frame must the employment relationship exist. The phrase "his employees" could include "his" former employees, but still exclude persons who have never worked for the particular employer being charged with retaliation.

Nor are we convinced by respondent's argument that Congress' inclusion in § 704(a) of "applicants for employment" as persons distinct from "employees," coupled with its failure to include "former employees," is evidence of congressional intent *not* to include former employees. The use of the term "applicants" in § 704(a) does not serve to confine, by negative inference, the temporal scope of the term "employees." Respondent's argument rests on the incorrect premise that the term "applicants" is equivalent to the phrase "future employees." But the term "applicants" would seem to cover many persons who will not become employees. Unsuccessful applicants or those who turn down a job offer, for example, would have been applicants, but not future employees. And the term fails to cover certain future employees who may be offered and will accept jobs without having to apply for those jobs. Because the term "applicants" in § 704(a) is not synonymous with the phrase "future employees," there is no basis for engaging in the further (and questionable) negative inference that inclusion of the term "applicants" demonstrates intentional exclusion of former employees.

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[4] Petitioner's examples of non-Title VII cases using the term "employee" to refer to a former employee are largely irrelevant, except to the extent they tend to rebut a claim that the term "employee" has some intrinsically plain meaning. See, *e. g., Richardson* v. *Belcher*, 404 U. S. 78, 81, 83 (1971) (unemployed disabled worker); *Nash* v. *Florida Industrial Comm'n*, 389 U. S. 235, 239 (1967) (individual who had been fired); *Flemming* v. *Nestor*, 363 U. S. 603, 611 (1960) (retired worker).

Finally, the use of the term "individual" in § 704(a), as well as in § 703(a), 42 U. S. C. § 2000e–2(a), provides no meaningful assistance in resolving this case. To be sure, "individual" is a broader term than "employee" and would facially seem to cover a former employee. But it would also encompass a present employee as well as other persons who have never had an employment relationship with the employer at issue. The term "individual," therefore, does not seem designed to capture former employees, as distinct from current employees, and its use provides no insight into whether the term "employees" is limited only to current employees.

B

Finding that the term "employees" in § 704(a) is ambiguous, we are left to resolve that ambiguity. The broader context provided by other sections of the statute provides considerable assistance in this regard. As noted above, several sections of the statute plainly contemplate that former employees will make use of the remedial mechanisms of Title VII. See *supra,* at 342–343. Indeed, § 703(a) expressly includes discriminatory "discharge" as one of the unlawful employment practices against which Title VII is directed. 42 U. S. C. § 2000e–2(a). Insofar as § 704(a) expressly protects employees from retaliation for filing a "charge" under Title VII, and a charge under § 703(a) alleging unlawful discharge would necessarily be brought by a former employee, it is far more consistent to include former employees within the scope of "employees" protected by § 704(a).

In further support of this view, petitioner argues that the word "employees" includes former employees because to hold otherwise would effectively vitiate much of the protection afforded by § 704(a). See Brief for Petitioner 20–30. This is also the position taken by the EEOC. See Brief for

United States and EEOC as *Amici Curiae* 16–25; see also 2 EEOC Compliance Manual §614.7(f). According to the EEOC, exclusion of former employees from the protection of §704(a) would undermine the effectiveness of Title VII by allowing the threat of postemployment retaliation to deter victims of discrimination from complaining to the EEOC, and would provide a perverse incentive for employers to fire employees who might bring Title VII claims. Brief for United States and EEOC as *Amici Curiae* 18–21.

Those arguments carry persuasive force given their coherence and their consistency with a primary purpose of antiretaliation provisions: Maintaining unfettered access to statutory remedial mechanisms. Cf. *NLRB* v. *Scrivener*, 405 U. S. 117, 121–122 (1972) (National Labor Relations Act); *Mitchell* v. *Robert DeMario Jewelry, Inc.*, 361 U. S. 288, 292–293 (1960) (Fair Labor Standards Act). The EEOC quite persuasively maintains that it would be destructive of this purpose of the antiretaliation provision for an employer to be able to retaliate with impunity against an entire class of acts under Title VII—for example, complaints regarding discriminatory termination. We agree with these contentions and find that they support the inclusive interpretation of "employees" in §704(a) that is already suggested by the broader context of Title VII.

III

We hold that the term "employees," as used in §704(a) of Title VII, is ambiguous as to whether it includes former employees. It being more consistent with the broader context of Title VII and the primary purpose of §704(a), we hold that former employees are included within §704(a)'s coverage. Accordingly, the decision of the Fourth Circuit is reversed.

It is so ordered.

UNITED STATES *v.* BROCKAMP, ADMINISTRATOR OF THE ESTATE OF McGILL, DECEASED

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 95–1225. Argued December 3, 1996—Decided February 18, 1997*

After the taxpayer in each of these cases paid the Internal Revenue Service (IRS) money he did not owe, he (or his representative) submitted an administrative refund claim several years past the end of the applicable filing period set forth in § 6511 of the Internal Revenue Code of 1986. Each taxpayer asked the court to extend the statutory period for an "equitable" reason, namely, that he had a mental disability (senility or alcoholism) that caused the delay. Such a reason is not mentioned in § 6511, but, in both cases, the Ninth Circuit read the statute as if it contained an implied "equitable tolling" exception. It then applied equity principles to each case, found that those principles justified tolling the statutory period, and permitted the actions to proceed.

Held: Congress did not intend the "equitable tolling" doctrine to apply to § 6511's time (and related amount) limitations for filing tax refund claims. The taxpayers misplace their reliance on *Irwin* v. *Department of Veterans Affairs,* 498 U. S. 89, 94–96. Even assuming, as they contend, that a tax refund suit and a private restitution suit are sufficiently similar to warrant asking *Irwin*'s negatively phrased question—Is there good reason to believe that Congress did *not* want the equitable tolling doctrine to apply in a suit against the Government?—there are strong reasons for answering that question in the Government's favor. Section 6511 sets forth its time limitations in a highly detailed technical manner, reiterates them several times in different ways, imposes substantive limitations, and sets forth explicit exceptions to its basic time limits that do not include "equitable tolling." To read such tolling into these provisions would require one to assume an implied tolling exception virtually every time a number appears in § 6511, and would require the tolling of that section's substantive limitations on the amount of recovery—a kind of tolling for which there is no direct precedent. There are no counterindications of congressional intent. Reading "equitable tolling" into the statute could create serious administrative problems by forcing the IRS to respond to, and perhaps litigate, large

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*Together with *United States* v. *Scott,* also on certiorari to the same court (see this Court's Rule 12.4).

numbers of late claims. That fact suggests that, at the least, Congress would likely have wanted to decide explicitly whether, or just where and when, to expand the statute's limitations periods, rather than delegate to the courts a generalized power to do so wherever it appears that equity so requires. The taxpayers' counterrebuttal, consisting primarily of a historical analysis of the tax refund provisions, actually helps the Government's argument. Pp. 349–354.

67 F. 3d 260 and 70 F. 3d 120, reversed.

BREYER, J., delivered the opinion for a unanimous Court.

Deputy Solicitor General Wallace argued the cause for the United States. With him on the briefs were *Acting Solicitor General Dellinger, Assistant Attorney General Argrett, Kent L. Jones, Gilbert S. Rothenberg,* and *Bridget M. Rowan.*

Robert F. Klueger argued the cause and filed a brief for respondents.

JUSTICE BREYER delivered the opinion of the Court.

The two cases before us raise a single question. Can courts toll, for nonstatutory equitable reasons, the statutory time (and related amount) limitations for filing tax refund claims set forth in § 6511 of the Internal Revenue Code of 1986? We hold that they cannot.

These two cases present similar circumstances. In each case a taxpayer initially paid the Internal Revenue Service (IRS) several thousand dollars that he did not owe. In each case the taxpayer (or his representative) filed an administrative claim for refund several years after the relevant statutory time period for doing so had ended. In each case the taxpayer suffered a disability (senility or alcoholism), which, he said, explained why the delay was not his fault. And in each case he asked the court to extend the relevant statutory time period for an "equitable" reason, namely, the existence of a mental disability—a reason not mentioned in § 6511, but which, we assume, would permit a court to toll the statutory limitations period *if, but only if,* § 6511 contains an implied "equitable tolling" exception. See 4 C. Wright & A. Miller, Federal Practice and Procedure § 1056 (2d ed. 1987 and Supp. 1996); see also *Wolin* v. *Smith Barney, Inc.*, 83 F. 3d 847, 852 (CA7 1996) (defining equitable tolling).

In both cases, the Ninth Circuit read § 6511 as if it did contain an implied exception that would permit "equitable tolling." It then applied principles of equity to each case. It found those principles justified tolling the statutory time period. And it permitted the actions to proceed. 67 F. 3d 260 (1995); judgt. order reported at 70 F. 3d 120 (1995). All other Circuits that have considered the matter, however, have taken the opposite view. They have held that § 6511 does not authorize equitable tolling. See *Amoco Production Co.* v. *Newton Sheep Co.*, 85 F. 3d 1464 (CA10 1996); *Lovett* v. *United States*, 81 F. 3d 143 (CA Fed. 1996); *Webb* v. *United States*, 66 F. 3d 691 (CA4 1995); *Oropallo* v. *United States*, 994 F. 2d 25 (CA1 1993) *(per curiam);* and *Vintilla* v. *United States*, 931 F. 2d 1444 (CA11 1991). We granted certiorari to resolve this conflict. And we conclude that the latter Circuits are correct.

The taxpayers rest their claim for equitable tolling upon *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89 (1990), a case in which this Court considered the timeliness of an employee's lawsuit charging his Government employer with discrimination, in violation of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.* The Court found the lawsuit untimely, but nevertheless tolled the limitations period. It held that the "rule of equitable tolling" applies "to suits against the Government, in the same way that it is applicable" to Title VII suits against private employers. 498 U. S., at 94–95. The Court went on to say that the "same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States." *Id.*, at 95–96.

The taxpayers, pointing to *Irwin*, argue that principles of equitable tolling would have applied had they sued private defendants, *e. g.*, had they sought restitution from private defendants for "Money Had and Received." See C. Keigwin, Cases in Common Law Pleading 220 (2d ed. 1934). They add that given *Irwin*'s language, there must be a "presumption" that limitations periods in tax refund suits against the Government can be equitably tolled. And, they say, that "presumption," while "rebuttable," has not been rebutted. They conclude that, given *Irwin*, the Ninth Circuit correctly tolled the statutory period for "equitable" reasons.

In evaluating this argument, we are willing to assume, favorably to the taxpayers but only for argument's sake, that a tax refund suit and a private suit for restitution are sufficiently similar to warrant asking *Irwin*'s negatively phrased question: Is there good reason to believe that Congress did *not* want the equitable tolling doctrine to apply? But see *Flora* v. *United States*, 362 U. S. 145, 153–154 (1960) (citing *Curtis's Administratrix* v. *Fiedler*, 2 Black 461, 479 (1863)) (distinguishing common-law suit against the tax collector from action of assumpsit for money had and received); *George Moore Ice Cream Co.* v. *Rose*, 289 U. S. 373, 382–383 (1933); see also Plumb, Tax Refund Suits Against Collectors of Internal Revenue, 60 Harv. L. Rev. 685, 687 (1947) (describing collector suit as a fiction solely designed to bring the Government into court). We can travel no further, however, along *Irwin*'s road, for there are strong reasons for answering *Irwin*'s question in the Government's favor.

Section 6511 sets forth its time limitations in unusually emphatic form. Ordinarily limitations statutes use fairly simple language, which one can often plausibly read as containing an implied "equitable tolling" exception. See, *e. g.*, 42 U. S. C. § 2000e–16(c) (requiring suit for employment discrimination to be filed "[w]ithin 90 days of receipt of notice of final [EEOC] action . . . "). But § 6511 uses language that is not simple. It sets forth its limitations in a highly detailed technical manner, that, linguistically speaking, cannot easily be read as containing implicit exceptions. Moreover,

§6511 reiterates its limitations several times in several different ways. Section 6511 says, first, that a

> "[c]laim for . . . refund . . . of any tax . . . shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed . . . within 2 years from the time the tax was paid." 26 U. S. C. §6511(a).

It then says that

> "[n]o credit or refund shall be allowed or made after the expiration of the period of limitation prescribed . . . unless a claim for . . . refund is filed . . . within such period." §6511(b)(1).

It reiterates the point by imposing substantive limitations:

> "If the claim was filed by the taxpayer during the 3-year period . . . the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. . . ." §6511(b)(2)(A).

And

> "[i]f the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim." §6511(b)(2)(B).

The Tax Code reemphasizes the point when it says that refunds that do not comply with these limitations "shall be considered erroneous," §6514, and specifies procedures for the Government's recovery of any such "erroneous" refund payment. §§6532(b), 7405. In addition, §6511 sets forth explicit exceptions to its basic time limits, and those very specific exceptions do not include "equitable tolling." See §6511(d) (establishing special time limit rules for refunds related to operating losses, credit carrybacks, foreign taxes, self-employment taxes, worthless securities, and bad debts); see also *United States* v. *Dalm,* 494 U. S. 596, 610 (1990) (discussing mitigation provisions set forth in 26 U. S. C. §§ 1311–1314); § 507 of the Revenue Act of 1942, 56 Stat. 961 (temporarily tolling limitations period during wartime).

To read an "equitable tolling" provision into these provisions, one would have to assume an implied exception for tolling virtually every time a number appears. To do so would work a kind of linguistic havoc. Moreover, such an interpretation would require tolling, not only procedural limitations, but also substantive limitations on the amount of recovery—a kind of tolling for which we have found no direct precedent. Section 6511's detail, its technical language, the iteration of the limitations in both procedural and substantive forms, and the explicit listing of exceptions, taken together, indicate to us that Congress did not intend courts to read other unmentioned, open-ended, "equitable" exceptions into the statute that it wrote. There are no counter-indications. Tax law, after all, is not normally characterized by case-specific exceptions reflecting individualized equities.

The nature of the underlying subject matter—tax collection—underscores the linguistic point. The IRS processes more than 200 million tax returns each year. It issues more than 90 million refunds. See Dept. of Treasury, Internal Revenue Service, 1995 Data Book 8–9. To read an "equitable tolling" exception into § 6511 could create serious administrative problems by forcing the IRS to respond to, and perhaps litigate, large numbers of late claims, accompanied by requests for "equitable tolling" which, upon close inspection, might turn out to lack sufficient equitable justification. See H. R. Conf. Rep. No. 356, 69th Cong., 1st Sess., 41 (1926) (deleting provision excusing tax deficiencies in the estates of insane or deceased individuals because of difficulties involved in defining incompetence). The nature and potential magnitude of the administrative problem suggest that Congress decided to pay the price of occasional unfairness in individual cases (penalizing a taxpayer whose claim is unavoidably delayed) in order to maintain a more workable tax enforcement system. At the least it tells us that Congress would likely have wanted to decide explicitly whether, or just where and when, to expand the statute's limitations periods, rather than delegate to the courts a generalized power to do so wherever a court concludes that equity so requires.

The taxpayers' counterrebuttal consists primarily of an interesting historical analysis of the Internal Revenue Code's tax refund provisions. They try to show that § 6511's specific, detailed language reflects congressional concern about matters not related to equitable tolling. They explain some language, for example, in terms of a congressional effort to stop taxpayers from keeping the refund period open indefinitely through the device of making a series of small tax payments. See S. Rep. No. 398, 68th Cong., 1st Sess., 33 (1924). They explain other language as an effort to make the refund time period and the tax assessment period coextensive. See H. R. Rep. No. 2333, 77th Cong., 2d Sess., 52 (1942). Assuming all that is so, however, such congressional efforts still seem but a smaller part of a larger congressional objective: providing the Government with strong statutory "protection against stale demands." Cf. *United States* v. *Garbutt Oil Co.*, 302 U. S. 528, 533 (1938) (statute of limitations bars untimely amendment of claim for additional refund). Moreover, the history to which the taxpayers point reveals that § 6511's predecessor tax refund provisions, like § 6511, contained highly detailed language with clear time limits. See, *e. g.*, § 281(b) of the Revenue Act of 1924, ch. 234, 43 Stat. 301 (4-year limit on claims for overpayment of income, war-profits, or excess-profits tax and cap on refund amount); § 322(b) of the Revenue Act of 1932, ch. 209, 47 Stat. 242 (2-year limit for claim filing and corresponding limit on refund amount); Internal Revenue Code of 1954, 68A Stat. 808 (adopting current alternative time and amount limitations); see also § 810 of the Revenue Act of 1932, ch. 209, 47 Stat. 283 (imposing time and amount limits for estate tax refunds). And that history lacks any instance (but for the present cases) of equitable tolling. On balance, these historical considerations help the Government's argument.

For these reasons, we conclude that Congress did not intend the "equitable tolling" doctrine to apply to § 6511's time limitations. The Ninth Circuit's decisions are

Reversed.

BIBLES, OREGON DIRECTOR, BUREAU OF LAND MANAGEMENT *v.* OREGON NATURAL DESERT ASSOCIATION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 96–713. Decided February 18, 1997

Certiorari granted; 83 F. 3d 1168, reversed and remanded.

PER CURIAM.

In this case, the Court of Appeals for the Ninth Circuit held that Exemption 6 of the Freedom of Information Act (FOIA), 5 U. S. C. § 552(b)(6), did not forbid disclosure of a mailing list maintained by petitioner for the Bureau of Land Management (BLM), and sought by respondent, the Oregon Natural Desert Association (ONDA). In reaching this conclusion, the Court of Appeals relied upon the "substantial public interest in knowing to whom the government is directing information, or as ONDA characterizes it, 'propaganda,' *so that those persons may receive information from other sources that do not share the BLM's self-interest in presenting government activities in the most favorable light.*" 83 F. 3d 1168, 1171 (1996) (emphasis added). "There is," the Court of Appeals said, "a significant public interest in knowing with whom the government has chosen to communicate *and in providing those persons with additional information . . . .*" *Id.*, at 1172 (emphasis added).

These statements, which are the sum total of the Court of Appeals' analysis of the public interest in disclosure, make clear that the court's judgment rested on a perceived public interest in "providing [persons on the BLM's mailing list] with additional information." That is inconsistent with our opinion in *Department of Defense* v. *FLRA*, 510 U. S. 487 (1994), which said that "the *only* relevant public interest in the FOIA balancing analysis" is "the extent to which disclosure of the information sought would 'she[d] light on an agency's performance of its statutory duties' or otherwise let citizens know 'what their government is up to.'" *Id.*, at 497 (emphasis added) (quoting *Department of Justice* v. *Reporters Comm. for Freedom of Press*, 489 U. S. 749, 773 (1989)). "'[T]he purposes for which the request for information is made,'" we said, have no bearing on whether information must be disclosed under FOIA. 510 U. S., at 496 (quoting *Reporters Comm. for Freedom of Press, supra*, at 771).

The petition for writ of certiorari is granted, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SCHENCK ET AL. *v.* PRO-CHOICE NETWORK OF WESTERN NEW YORK ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 95–1065. Argued October 16, 1996—Decided February 19, 1997

Respondents, upstate New York abortion doctors and clinics and an organization dedicated to maintaining access to abortion services, filed a complaint in the District Court seeking to enjoin petitioners, other individuals, and three organizations from engaging in blockades and other illegal conduct at the clinics. The record shows that, before the complaint was filed, the clinics were subjected to numerous large-scale blockades in which protesters marched, stood, knelt, sat, or lay in clinic parking lot driveways and doorways, blocking or hindering cars from entering the lots, and patients and clinic employees from entering the clinics. In addition, smaller groups of protesters consistently attempted to stop or disrupt clinic operations by, among other things, milling around clinic doorways and driveway entrances, trespassing onto clinic parking lots, crowding around cars, and surrounding, crowding, jostling, grabbing, pushing, shoving, and yelling and spitting at women entering the clinics and their escorts. On the sidewalks outside the clinics, protesters called "sidewalk counselors" used similar methods in attempting to dissuade women headed toward the clinics from having abortions. The local police were unable to respond effectively to the protests due, in part, to the fact that the defendants harassed them verbally and by mail. The District Court issued a temporary restraining order (TRO), and later, after the protests and sidewalk counseling continued, a preliminary injunction. As relevant here, injunction provisions banned "demonstrating within fifteen feet . . . of . . . doorways or doorway entrances, parking lot entrances, driveways and driveway entrances of [clinic] facilities" (fixed buffer zones), or "within fifteen feet of any person or vehicle seeking access to or leaving such facilities" (floating buffer zones). Another provision allowed two sidewalk counselors inside the buffer zones, but required them to "cease and desist" their counseling if the counselee so requested. In its accompanying opinion, the District Court, *inter alia*, rejected petitioners' assertion that the injunction violated their First Amendment right to free speech. The en banc Court of Appeals affirmed.

Held: The injunction provisions imposing "fixed buffer zone" limitations are constitutional, but the provisions imposing "floating buffer zone" limitations violate the First Amendment. Pp. 371–385.

(a) Because *Madsen* v. *Women's Health Center, Inc.,* 512 U. S. 753, bears many similarities to this case and because many of the parties' arguments depend on the application of *Madsen* here, the Court reviews that decision. In *Madsen,* the Court said that "standard time, place, and manner analysis is not sufficiently rigorous" for evaluating content-neutral *injunctions* that restrict speech, and held, instead, that the test is "whether the challenged provisions . . . burden no more speech than necessary to serve a significant government interest." *Id.,* at 765. Pp. 371–374.

(b) Petitioners' argument that no significant governmental interests support the injunction at issue is rejected. Given the factual similarity between this case and *Madsen,* the Court concludes that the governmental interests underlying the injunction there—ensuring public safety and order, promoting the free flow of traffic on streets and sidewalks, protecting property rights, and protecting a woman's freedom to seek pregnancy-related services, 512 U. S., at 767–768—also underlie the injunction here, and in combination are certainly significant enough to justify an appropriately tailored injunction to secure unimpeded physical access to the clinics. Pp. 374–376.

(c) The floating buffer zones are struck down because they burden more speech than is necessary to serve the relevant governmental interests. Such zones around people prevent defendants—except for sidewalk counselors tolerated by the targeted individual—from communicating a message from a normal conversational distance or handing out leaflets on the public sidewalks. This is a broad prohibition, both because of the type of speech restricted and the nature of the location. Leafletting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment, and speech in public areas is at its most protected on public sidewalks, a prototypical example of a traditional public forum. See, *e. g., Boos* v. *Barry,* 485 U. S. 312, 322. Although a record of abusive conduct sometimes makes a prohibition on classic speech in limited parts of a public sidewalk permissible, see, *e. g., Madsen, supra,* at 769–770, the Court need not decide whether the governmental interests involved would ever justify a separation zone measured by the distance between targeted individuals and protesters, since the fact that this broad speech prohibition "floats" renders it unsustainable on this record. Protesters on the public sidewalks who wish to communicate their message to a targeted individual and to remain as close as possible (while maintaining an acceptable conversational distance) must move as the individual moves, maintaining 15 feet of separation. But this would be difficult to accomplish at, *e. g.*, one of the respondent clinics which is bordered by a 17-foot-wide sidewalk. The lack of certainty as to how to remain in compliance with the injunction leads to a substantial risk that much more speech will be burdened than the injunction by its terms prohibits. There may well be other ways to both effect the desired separation and yet provide certainty (so that speech protected by the injunction's terms is not burdened). Because the Court strikes down the floating zones around people, it does not address the constitutionality of the "cease and desist" provision respecting those zones. The floating buffer zones around vehicles also fail the *Madsen* test. Such zones would restrict the speech of those who simply line the sidewalk or curb in an effort to chant, shout, or hold signs peacefully. Nothing in the record or the District Court's opinion contradicts the commonsense notion that a more limited injunction—*e. g.*, one that keeps protesters away from driveways and parking lot entrances and off the streets—would be sufficient to ensure that drivers are not confused about how to enter the clinic and are able to gain access to its driveways and parking lots safely and easily. Pp. 377–380.

(d) The fixed buffer zones around the clinic doorways, driveways, and driveway entrances are upheld. That these zones are necessary to ensure that people and vehicles can enter or exit the clinic property or parking lots is demonstrated by evidence in the record showing that, both before and after the TRO issued, protesters purposefully or effectively blocked or hindered people from entering and exiting the doorways and from driving up to and away from the entrances and in and out of the lots; that sidewalk counselors followed and crowded people right up to the doorways (and sometimes beyond) and then tended to stay in the doorways, shouting at the individuals who had managed to get inside; and that defendants' harassment of the local police made it far from certain that the police would be able to quickly and effectively counteract protesters who blocked doorways or threatened the safety of entering patients and employees. Deference is due the District Court's reasonable assessment that 15 feet is the proper distance to ensure access. See *Madsen, supra*, at 769–770. Petitioners' various arguments against the fixed buffer zones—that other, unchallenged injunction provisions are sufficient to ensure access to the clinics; that the District Court should first have tried a "non-speech-restrictive" injunction; that there is no extraordinary record of pervasive lawlessness here; and that the injunction's term "demonstrating" is vague—are rejected. Also rejected is petitioners' contention that the "cease and desist" provision limiting the sidewalk counselors exception in connection with the fixed buffer zone violates the First Amendment. This limitation must be assessed in light of the fact that the entire exception for counselors was an effort to enhance petitioners' speech rights. Moreover, the "cease and desist" provision is not content based simply because it allows a patient to terminate a protester's right to speak when the patient disagrees with the message being conveyed. Counselors remain free to espouse their message outside the 15-foot zone, and the condition on their freedom to espouse it within the zone is the result of their own previous harassment and intimidation of patients. Pp. 380–385.

67 F. 3d 377, affirmed in part, reversed in part, and remanded.

REHNQUIST, C. J., delivered the opinion for a unanimous Court with respect to Parts I and II–A, the opinion of the Court with respect to Part II–C, in which STEVENS, O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined, and the opinion of the Court with respect to Parts II–B and II–D, in which STEVENS, O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed an opinion concurring in part and dissenting in part, in which KENNEDY and THOMAS, JJ., joined, *post,* p. 385. BREYER, J., filed an opinion concurring in part and dissenting in part, *post,* p. 395.

Jay Alan Sekulow argued the cause for petitioners. With him on the briefs were *Vincent P. McCarthy, Joseph P. Secola, Thomas P. Monaghan, James M. Henderson, Sr., Walter M. Weber, Keith A. Fournier,* and *John G. Stepanovich.*

Lucinda M. Finley argued the cause for respondents. With her on the brief were *Martha F. Davis* and *Deborah A. Ellis.*

Acting Solicitor General Dellinger argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Assistant Attorney General Patrick, Deputy Solicitor General Bender, Beth S. Brinkmann,* and *Jessica Dunsay Silver.**

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*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union Foundation of Florida, Inc., et al. by *James K. Green* and *Richard A. Waples;* for the Family Research Council by *Cathleen A. Cleaver;* for Liberty Counsel by *Mathew D. Staver;* and for the Rutherford Institute by *Anne-Marie Amiel* and *John W. Whitehead.*

Briefs of *amici curiae* urging affirmance were filed for the State of Connecticut et al. by *Richard Blumenthal,* Attorney General of Connecticut, and *Jennifer C. Jaff,* Assistant Attorney General, joined by the Attorneys General for their respective jurisdictions as follows: *Gale A. Norton*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The question presented is whether an injunction that places restrictions on demonstrations outside abortion clinics violates the First Amendment. We uphold the provisions imposing "fixed bubble" or "fixed buffer zone" limitations, as hereinafter described, but hold that the provisions imposing "floating bubble" or "floating buffer zone" limitations violate the First Amendment.

I

Respondents include three doctors and four medical clinics (two of which are part of larger hospital complexes) in and around Rochester and Buffalo in upstate New York. These health care providers perform abortions and other medical services at their facilities. The eighth respondent is Pro-Choice Network of Western New York, a not-for-profit cor-

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of Colorado, *Robert A. Butterworth* of Florida, *Calvin E. Holloway, Sr.*, of Guam, *Margery S. Bronster* of Hawaii, *Pamela Carter* of Indiana, *Carla J. Stovall* of Kansas, *J. Joseph Curran, Jr.*, of Maryland, *Scott Harshbarger* of Massachusetts, *Hubert H. Humphrey III* of Minnesota, *Deborah T. Poritz* of New Jersey, *Tom Udall* of New Mexico, *Frankie Sue Del Papa* of Nevada, *Michael F. Easley* of North Carolina, *Theodore R. Kulongoski* of Oregon, *Jeffrey L. Amestoy* of Vermont, *Christine O. Gregoire* of Washington, and *Darrell V. McGraw, Jr.*, of West Virginia; for the State of New York by *Dennis C. Vacco*, Attorney General, *Victoria A. Graffeo*, Solicitor General, *Barbara G. Billet*, Deputy Solicitor General, and *Robert A. Forte*, Assistant Attorney General; for the City of Phoenix, Arizona, by *David A. Strauss, Roderick G. McDougall*, and *Marvin A. Sondag;* for the American Civil Liberties Union et al. by *Steven R. Shapiro, Marjorie Heins, Elliot Mincberg*, and *Lois Waldman;* for the American College of Obstetricians and Gynecologists et al. by *Elaine Metlin, Laura B. Feigin, Ann E. Allen, Roger K. Evans*, and *Eve W. Paul;* for the Feminist Majority Foundation et al. by *Talbot D'Alemberte;* and for the American Medical Women's Association et al. by *Eve C. Gartner.*

Briefs of *amici curiae* were filed for the American Federation of Labor and Congress of Industrial Organizations by *Jonathan P. Hiatt, Marsha S. Berzon*, and *Laurence Gold;* and for the Life Legal Defense Foundation by *Anne J. Kindt.*

poration dedicated to maintaining access to family planning and abortion services.

On September 24, 1990, respondents filed a complaint in the District Court for the Western District of New York against 50 individuals and 3 organizations—Operation Rescue, Project Rescue Western New York, and Project Life of Rochester. The complaint alleged that defendants had consistently engaged in illegal blockades and other illegal conduct at facilities in the Western District of New York where abortions were performed. (For convenience, we refer to these facilities as "clinics" throughout.) The complaint alleged one federal and six state causes of action: conspiracy to deprive women seeking abortions or other family planning services of the equal protection of the laws, in violation of Rev. Stat. § 1980, 42 U. S. C. § 1985(3); discrimination against and harassment of women seeking abortions and other family planning services, in violation of N. Y. Civ. Rights Law § 40–c (McKinney 1992) and N. Y. Exec. Law § 296 (McKinney 1993); trespass; tortious interference with business; tortious harassment; false imprisonment; and intentional infliction of emotional harm. The complaint alleged that a large blockade was planned for September 28, and requested that the court issue a temporary restraining order (TRO) to stop it. The complaint also sought a permanent injunction and damages.

Before the complaint was filed, the clinics were subjected to numerous large-scale blockades in which protesters would march, stand, kneel, sit, or lie in parking lot driveways and in doorways. This conduct blocked or hindered cars from entering clinic parking lots, and patients, doctors, nurses, and other clinic employees from entering the clinics.

In addition to these large-scale blockades, smaller groups of protesters consistently attempted to stop or disrupt clinic operations. Protesters trespassed onto clinic parking lots and even entered the clinics themselves. Those trespassers who remained outside the clinics crowded around cars or milled around doorways and driveway entrances in an effort to block or hinder access to the clinics. Protesters sometimes threw themselves on top of the hoods of cars or crowded around cars as they attempted to turn into parking lot driveways. Other protesters on clinic property handed literature and talked to people entering the clinics—especially those women they believed were arriving to have abortions—in an effort to persuade them that abortion was immoral. Sometimes protesters used more aggressive techniques, with varying levels of belligerence: getting very close to women entering the clinics and shouting in their faces; surrounding, crowding, and yelling at women entering the clinics; or jostling, grabbing, pushing, and shoving women as they attempted to enter the clinics. Male and female clinic volunteers who attempted to escort patients past protesters into the clinics were sometimes elbowed, grabbed, or spit on. Sometimes the escorts pushed back. Some protesters remained in the doorways after the patients had entered the clinics, blocking others from entering and exiting.

On the sidewalks outside the clinics, protesters called "sidewalk counselors" used similar methods. Counselors would walk alongside targeted women headed toward the clinics, handing them literature and talking to them in an attempt to persuade them not to get an abortion. Unfortunately, if the women continued toward the clinics and did not respond positively to the counselors, such peaceful efforts at persuasion often devolved into "in your face" yelling, and sometimes into pushing, shoving, and grabbing. Men who accompanied women attempting to enter the clinics often became upset by the aggressive sidewalk counseling and sometimes had to be restrained (not always successfully) from fighting with the counselors.

The District Court found that the local police had been "unable to respond effectively" to the protests, for a number of reasons: the protests were constant, overwhelming police resources; when the police arrived, the protesters simply dispersed and returned later; prosecution of arrested protesters was difficult because patients were often reluctant to cooperate for fear of making their identity public; and those who were convicted were not deterred from returning to engage in unlawful conduct. In addition, the court found that defendants harassed the police officers verbally and by mail, including the deputy police chief. Also harassed were people who testified against the protesters and "those who invoke[d] legal process against" the protesters. This, testified the deputy police chief, "made it more difficult for him to do his job." *Pro-Choice Network of Western N. Y.* v. *Project Rescue Western N. Y.*, 799 F. Supp. 1417, 1426–1427 (WDNY 1992). See also *id.*, at 1431 ("[T]here has been substantial uncontradicted evidence that defendants' activities are intended, and do in fact, prevent and hinder local police from protecting the right of women to choose to have an abortion").

On September 27, 1990, three days after respondents filed their complaint and one day before the scheduled large-scale blockade, the District Court issued a TRO. The parties stipulated that the TRO might remain in force until decision on respondents' motion for a preliminary injunction. In pertinent part, the TRO enjoined defendants from physically blockading the clinics, physically abusing or tortiously harassing anyone entering or leaving the clinics, and "demonstrating within 15 feet of any person" entering or leaving the clinics. As an exception to this 15-foot "buffer zone" around people, the TRO allowed two sidewalk counselors to have "a conversation of a nonthreatening nature" with individuals entering or leaving the clinic. If the individuals indicated that they did not want the counseling, however, the counselors had to "cease and desist" from counseling.[1]

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[1] Although the TRO (and the preliminary injunction) states that the "cease and desist" provision is triggered whenever the individual "wants to not have counseling," the District Court has construed this provision to apply only if "the targeted person or group of persons indicates, either

At first, defendants complied with the TRO, holding a peaceful demonstration rather than the scheduled blockade. Subsequently, they stipulated that "physical blockades" could be enjoined, and they conducted no such blockades between the issuance of the TRO and the issuance of the preliminary injunction 17 months later. Defendants, however, continued to engage in protests that the District Court labeled "constructive blockades," as well as sidewalk counseling. Constructive blockades consisted of "demonstrating and picketing around the entrances of the clinics, and . . . harassing patients and staff entering and leaving the clinics." *Id.*, at 1424. This included many of the protest elements described above, including attempts to intimidate or impede cars from entering the parking lots, congregating in driveway entrances, and crowding around, yelling at, grabbing, pushing, and shoving people entering and leaving the clinics. The purpose of constructive blockades was the same as physical blockades: "to prevent or dissuade patients from entering the clinic." *Ibid.* Clinic volunteer escorts testified that the protests were much quieter, calmer, and smaller during the first month after the TRO issued, but that the protests returned to their prior intensity thereafter, including aggressive sidewalk counseling with occasional shoving and elbowing, trespassing into clinic buildings to continue counseling of patients, and blocking of doorways and driveways.

Alleging that Project Rescue and five individual defendants (including petitioner Schenck) breached the TRO on five separate occasions from late October 1990 through December 1990, respondents sought four contempt citations. A fifth contempt citation for a 1991 incident was sought against petitioner Schenck and another individual defendant. Throughout 1991 and into 1992, the District Court held 27 days of hearings in these contempt proceedings, and issued opinions

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verbally or non-verbally, that they do not wish to be counseled." 799 F. Supp., at 1434. See also 67 F. 3d 377, 391 (CA2 1995) (same).

concluding that five of the six incidents justified a finding of civil contempt.[2]

In February 1992, after hearing 12 additional days of testimony, the District Court issued the injunction, parts of which are challenged here. The relevant provisions are set forth in the margin.[3] Although the injunction largely

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[2] Respondents filed other contempt motions after the District Court issued its preliminary injunction. Since we are only concerned with the propriety of the injunction, we consider only the evidence that was before the court when it issued the injunction.

[3] "[D]efendants, the officers, directors, agents, and representatives of defendants, and all other persons whomsoever, known or unknown, acting in their behalf or in concert with them, and receiving actual or constructive notice of this Order, are:

"1. Enjoined and restrained in any manner or by any means from:

"(a) trespassing on, sitting in, blocking, impeding, or obstructing access to, ingress into or egress from any facility, including, but not limited to, the parking lots, parking lot entrances, driveways, and driveway entrances, at which abortions are performed in the Western District of New York;

"(b) demonstrating within fifteen feet from either side or edge of, or in front of, doorways or doorway entrances, parking lot entrances, driveways and driveway entrances of such facilities, or within fifteen feet of any person or vehicle seeking access to or leaving such facilities, except that the form of demonstrating known as sidewalk counseling by no more than two persons as specified in paragraph (c) shall be allowed;

"(c) physically abusing, grabbing, touching, pushing, shoving, or crowding persons entering or leaving, working at or using any services at any facility at which abortions are performed; provided, however, that sidewalk counseling consisting of a conversation of a non-threatening nature by not more than two people with each person or group of persons they are seeking to counsel shall not be prohibited. Also provided that no one is required to accept or listen to sidewalk counseling, and that if anyone or any group of persons who is sought to be counseled wants to not have counseling, wants to leave, or walk away, they shall have the absolute right to do that, and in such event all persons seeking to counsel that person or group of persons shall cease and desist from such counseling, and shall thereafter be governed by the provisions of paragraph (b) pertaining to not demonstrating within fifteen feet of persons seeking access to or leaving a facility. In addition, it is further provided that this right to sidewalk counseling as defined herein shall not limit the right of the Police Department to maintain public order or such reasonably necessary tracked the TRO, there were significant changes. First, while the TRO banned "demonstrating . . . within fifteen feet of any person" entering or leaving the clinics, the injunction more broadly banned "demonstrating within fifteen feet from either side or edge of, or in front of, doorways or doorway entrances, parking lot entrances, driveways and driveway entrances of such facilities" (fixed buffer zones), or "within fifteen feet of any person or vehicle seeking access to or leaving such facilities" (floating buffer zones). In addition, the injunction clarified the "cease and desist" provision, specifying that once sidewalk counselors who had entered the buffer zones were required to "cease and desist" their counseling, they had to retreat 15 feet from the people they had been counseling and had to remain outside the boundaries of the buffer zones.

In its opinion accompanying the preliminary injunction, the District Court stated the relevant inquiry as whether respondents had established (i) that they would be irreparably harmed if the injunction was not granted and (ii) that they were likely to succeed on the merits. The court held that the irreparable harm requirement was met, because "those women denied unimpeded access to [the clinics] cannot be compensated merely by money damages. Injunctive relief alone can assure women unimpeded access to [the] clinics." *Id.*, at 1428. The court also held that respondents were likely to succeed on at least three of their claims. First, relying on *New York State National Organization for*

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rules and regulations as they decide are necessary at each particular demonstration site;

"(d) using any mechanical loudspeaker or sound amplification device or making any excessively loud sound which injures, disturbs, or endangers the health or safety of any patient or employee of a health care facility at which abortions are performed, nor shall any person make such sounds which interfere with the rights of anyone not in violation of this Order;

"(e) attempting, or inducing, directing, aiding, or abetting in any manner, others to take any of the actions described in paragraphs (a) through (d) above." 799 F. Supp., at 1440–1441.

Women v. *Terry*, 886 F. 2d 1339 (CA2 1989), cert. denied, 495 U. S. 947 (1990), the court held that women seeking abortions constituted a protected class under 42 U. S. C. § 1985(3), and that their constitutional right to travel between States and to choose to have an abortion was likely infringed by defendants, in violation of § 1985(3). Second, the court held that the same conduct that infringed this class of women's constitutional rights under § 1985(3) "clearly violates N. Y. Civ. Rights Law § 40–c."[4] 799 F. Supp., at 1431. Finally, the court held that in light of the "overwhelming evidence that defendants have repeatedly trespassed upon [the clinics'] property in the past and may continue to trespass in the future," respondents had shown a likelihood of success on their trespass claim. *Id.*, at 1432. Having already found likelihood of success on these claims, the court chose not to address respondents' other four state-law claims. *Id.*, at 1432, n. 11.

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[4] Nevertheless, in explaining why respondents were likely to succeed on this claim, the District Court used different language to describe respondents' § 40–c claim than it had used to describe respondents' § 1985(3) claim. Compare *id.*, at 1431 (§ 40–c: "defendants' conspiracy is intended to deprive women of their constitutional rights to travel and to choose to have an abortion, and subjects them to harassment when they seek to exercise those rights"), with *id.*, at 1430 (§ 1985(3): "[defendants are] engaging in a conspiracy . . . against a cognizable class of persons, with invidious class-based animus[,] . . . [they are] committing overt acts in furtherance of the conspiracy[,] . . . [and the] conspiracy infringes two constitutional rights of women seeking abortions"). This was presumably to track the different language of § 40–c. Compare N. Y. Civ. Rights Law § 40–c(2) (McKinney 1992) ("No person shall, because of . . . sex . . . be subjected to any discrimination in his civil rights, or to any harassment . . . in the exercise thereof, by any other person . . .") with 42 U. S. C. § 1985(3) ("If two or more persons . . . conspire . . . for the purpose of depriving . . . any person . . . of the equal protection of the laws . . . [and] one or more persons engaged therein do . . . any act in furtherance of the object of such conspiracy, whereby another is . . . deprived of having and exercising any right or privilege of a citizen of the United States, the party so . . . deprived may have an action for the recovery of damages . . .").

In analyzing defendants' assertion that the injunction violated their First Amendment right to free speech, the court applied our standard "time, place, and manner analysis," asking whether the speech restrictions in the injunction (i) were content neutral, (ii) were narrowly tailored to serve a significant government interest, and (iii) left open ample alternative channels for communication of the information. *Id.*, at 1432 (citing *Frisby* v. *Schultz,* 487 U. S. 474, 481 (1988)). The court held that the injunction was content neutral because "it merely restricts the volume, location, timing and harassing and intimidating nature of defendants' expressive speech." 799 F. Supp., at 1433. The court held that the injunction served three significant governmental interests—public safety, ensuring that abortions are performed safely, and ensuring that a woman's constitutional rights to travel interstate and to choose to have an abortion were not sacrificed in the interest of defendants' First Amendment rights.[5]

As to narrow tailoring, the court explained that the 15-foot buffer zones "around entrances and . . . around people and vehicles seeking access . . . are necessary to ensure that people and vehicles seeking access to the clinics will not be impeded, and will be able to determine readily where the entrances are located." *Id.*, at 1434. The court added that the buffer zones would also provide the benefit of "prevent[ing] defendants from crowding patients and invading their personal space." *Ibid.* The court explained the "cease and desist" provision—allowing two sidewalk counselors inside the buffer zones but requiring them to "cease and desist" their counseling if the counselee asked to be left alone—as

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[5] The court noted that although defendants had stipulated to the entry of "an injunction against 'blocking or obstructing' access" to the clinics and against trespassing on clinic property "for the purpose of 'blocking or obstructing" access, the injunction's terms were "more comprehensive" than the term "blocking or obstructing access." A broader injunction was justified in this case, said the court, because it was "better tailored to the evidence." 799 F. Supp., at 1433.

"an exception" to the buffer zones and as "an attempt to accommodate fully defendants' First Amendment rights." *Ibid.* The court held that this provision was "necessary in order to protect the right of people approaching and entering the facilities to be left alone." *Id.*, at 1435. Finally, the court held that the injunction left open ample alternative channels for communication, because defendants could still "picket, carry signs, pray, sing or chant in full view of people going into the clinics." *Id.*, at 1437.

After the District Court issued its opinion, we held in *Bray* v. *Alexandria Women's Health Clinic*, 506 U. S. 263, 269 (1993), that "women seeking an abortion" were not a protected class under 42 U. S. C. § 1985(3). In light of *Bray*, the District Court dismissed respondents' § 1985(3) claim, with leave to file an amended § 1985(3) cause of action. *Pro-Choice Network of Western N. Y.* v. *Project Rescue Western N. Y.*, 828 F. Supp. 1018, 1025 (WDNY 1993). The court then decided to exercise pendent jurisdiction over respondents' remaining causes of action (the six state claims), regardless of the ultimate disposition of the § 1985(3) claim. In so deciding, the court noted that "the preliminary injunction is grounded not only on the § 1985(3) claim, but two state-law claims [the N. Y. Civ. Rights Law § 40–c claim and the trespass claim] as well." *Id.*, at 1026, n. 4. The court explained that judicial economy, convenience, and fairness all suggested that it keep the case, since it had expended substantial resources on the case and its involvement in the case was ongoing. *Id.*, at 1028–1029 (citing the contempt motions filed by respondents in 1990 and 1991, criminal contempt charges brought against six individuals for protests in 1992, and civil and criminal contempt motions filed in 1993).

Petitioners, two individual defendants, appealed to the Court of Appeals for the Second Circuit. While the case was on appeal, we decided *Madsen* v. *Women's Health Center, Inc.*, 512 U. S. 753 (1994), a case which also involved the effect of an injunction on the expressive activities of antiabortion protesters. (We discuss *Madsen* in greater depth in Part II–A, *infra.*) We held that "our standard time, place, and manner analysis is not sufficiently rigorous" when it comes to evaluating content-neutral *injunctions* that restrict speech. The test instead, we held, is "whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest." 512 U. S., at 765.

Applying *Madsen,* a panel of the Court of Appeals reversed the District Court in a split decision. 67 F. 3d 359 (1994). The Court of Appeals then heard the case en banc, and affirmed the District Court by a divided vote. 67 F. 3d 377 (1995). Each of two opinions garnered a majority of the court. Judge Oakes' lead opinion, joined by eight other judges, affirmed for reasons that closely track the reasoning of the District Court. *Id.,* at 388–392. A concurring opinion by Judge Winter, joined by nine other judges, affirmed primarily on the ground that the protesters' expressive activities were not protected by the First Amendment at all, and because the District Court's injunction was a "reasonable response" to the protesters' conduct. *Id.,* at 396, 398. We granted certiorari. 516 U. S. 1170 (1996).

II

A

Petitioners challenge three aspects of the injunction: (i) the floating 15-foot buffer zones around people and vehicles seeking access to the clinics; (ii) the fixed 15-foot buffer zones around the clinic doorways, driveways, and parking lot entrances; and (iii) the "cease and desist" provision that forces sidewalk counselors who are inside the buffer zones to retreat 15 feet from the person being counseled once the person indicates a desire not to be counseled. Because *Madsen* bears many similarities to this case and because many of the parties' arguments depend on the application of *Madsen* here, we review our determination in that case.

A Florida state court had issued a permanent injunction enjoining specified organizations and individuals from blocking or interfering with clinic access and from physically abusing people entering or leaving the clinic. Six months after the injunction issued, the court found that protesters still impeded access by demonstrating on the street and in the driveways, and that sidewalk counselors approached entering vehicles in an effort to hand literature to the occupants. In the face of this evidence, the court issued a broader injunction that enjoined the defendant protesters from " 'physically abusing, grabbing, intimidating, harassing, touching, pushing, shoving, crowding or assaulting' " anyone entering or leaving the clinic; from " 'congregating, picketing, patrolling, demonstrating or entering that portion of public right-of-way or private property within [36] feet of the property line of the Clinic' "; from approaching anyone " 'seeking the services of the Clinic' " who is within 300 feet of the clinic, unless the person " 'indicates a desire to communicate' "; and from making any noise or displaying any image which could be heard or seen inside the clinic. 512 U. S., at 759–760.

After determining that the injunction was not a prior restraint and was content neutral, *id.*, at 762–764, we held that the proper test for evaluating content-neutral injunctions under the First Amendment was "whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest," *id.*, at 765. The Florida Supreme Court had concluded that the injunction was based on a number of governmental interests: protecting a woman's freedom to seek pregnancy-related services, ensuring public safety and order, promoting the free flow of traffic on streets and sidewalks, protecting property rights, and protecting the medical privacy of patients whose psychological and physical well-being were threatened as they were held "captive" by medical circumstance. *Id.*, at 767–768. We held that the combination of these interests was "quite sufficient to justify an appropriately tailored injunction" to protect unimpeded access to the clinic by way of public streets and sidewalks. *Id.*, at 768.

We held that some of the injunction's provisions burdened more speech than necessary to serve these interests, and that others did not. We upheld the 36-foot buffer zone as applied to the street, sidewalks, and driveways "as a way of ensuring access to the clinic." We explained that the trial court had few other options to protect access to the clinic: Allowing protesters to remain on the sidewalks and in the clinic driveway was not a valid option because of their past conduct, and allowing them to stand in the street was obviously impractical. In addition, we stated that "some deference must be given to the state court's familiarity with the facts and the background of the dispute between the parties even under our heightened review." *Id.*, at 769–770 (citing *Milk Wagon Drivers* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287, 294 (1941)).

We struck down the 300-foot no-approach zone around the clinic, however, stating that it was difficult

> "to justify a prohibition on *all* uninvited approaches . . . regardless of how peaceful the contact may be . . . . Absent evidence that the protesters' speech is independently proscribable (*i. e.*, 'fighting words' or threats), or is so infused with violence as to be indistinguishable from a threat of physical harm, see *Milk Wagon Drivers*, 312 U. S., at 292–293, this provision cannot stand. 'As a general matter, we have indicated that in public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment.' *Boos* v. *Barry*, 485 U. S. [312, 322 (1988)] (internal quotation marks omitted). The 'consent' requirement alone invalidates this provision; it burdens more speech than is necessary to prevent intimidation and to ensure access to the clinic." 512 U. S., at 774.

We now apply *Madsen* to the challenged provisions of the injunction and ask whether they burden more speech than necessary to serve a significant governmental interest.[6]

B

Petitioners first argue that there are no significant governmental interests that support the injunction. The argument goes as follows: Of the seven causes of action in respondents' complaint, the only one left standing after the District Court's most recent opinion is respondents' trespass claim; a trespass cause of action can support an injunction banning trespass, but nothing else; thus, the injunction's provisions banning "demonstrating" within 15 feet of people, cars, and entrances are overbroad.

First, this argument is factually incorrect. The trespass claim is not the only one left standing at this point. In its opinion issuing the preliminary injunction, the District Court held that the conduct that satisfied the elements of a § 1985(3) claim under federal law also satisfied the elements of a § 40–c claim under state law. After our decision in *Bray*, the District Court dismissed respondents' § 1985(3) claim. Petitioners argue that in doing so, the District Court necessarily and implicitly dismissed the § 40–c claim as well, since the two claims were based on the same conduct. But our opinion in *Bray* did not attempt to construe any statute other than § 1985(3). And the fact that certain conduct does not state a claim under § 1985(3) does not necessarily mean that the same conduct does not state a claim under a state law that uses the same or similar language as § 1985(3), since state courts may of course choose to construe their own law more broadly (or more narrowly) than its federal counterpart. In any event, the language of the two statutes is noticeably different. See n. 4, *supra.* Thus, the dismissal of the § 1985(3) claim in light of *Bray* did not also act as a dismissal of respondents' § 40–c claim. This is confirmed by the District Court's comment in its post-*Bray* opinion that "the preliminary injunction is grounded not only on the § 1985(3) claim, but two state-law claims as well." 828 F. Supp., at 1026, n. 4.

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[6] Petitioners argue that the injunction is an unlawful prior restraint and that the standard we set out in *Madsen* is therefore inapplicable. Because we rejected this argument in *Madsen* and because petitioners make no effort to distinguish *Madsen* on this ground, we reject it again. As in *Madsen*, alternative channels of communication were left open to the protesters, and "the injunction was issued not because of the content of [the protesters'] expression, . . . but because of their prior unlawful conduct." *Madsen*, 512 U. S., at 764, n. 2.

Although petitioners contend that the § 40–c cause of action is no longer valid simply because the § 1985(3) claim is no longer valid, an argument we reject, they do not contend that the District Court erred in concluding as an independent matter that respondents were likely to succeed on their § 40–c and trespass claims. See Brief for Petitioners 32. The injunction's terms are clearly crafted to remedy these violations.

An injunction tailored to respondents' claims for relief may nonetheless violate the First Amendment. In making their First Amendment challenge, petitioners focus solely on the interests asserted by respondents in their complaint. But in assessing a First Amendment challenge, a court looks not only at the private claims asserted in the complaint, but also inquires into the governmental interests that are protected by the injunction, which may include an interest in public safety and order. *Madsen,* 512 U. S., at 767–768; *Milk Wagon Drivers, supra,* at 294–295. Both the injunction in *Madsen* and the injunction here are supported by this governmental interest. In *Madsen,* it was permissible to move protesters off the sidewalk and to the other side of the street in part because other options would block the free flow of traffic on the streets and sidewalks. 512 U. S., at 767–768. Here, the District Court cited public safety as one of the interests justifying the injunction—certainly a reasonable conclusion, if only because of the dangerous situation created by the interaction between cars and protesters and because of the fights that threatened to (and sometimes did) develop. Even though the governmental interest in public safety is clearly a valid interest here, as it was in *Madsen*, plaintiffs in neither case pleaded a claim for "threat to public safety." Indeed, this would be a strange concept, since a plaintiff customarily alleges violations of private rights, while "public safety" expresses a public right enforced by the government through its criminal laws and otherwise. Thus, the fact that "threat to public safety" is not listed anywhere in respondents' complaint as a claim does not preclude a court from relying on the significant governmental interest in public safety in assessing petitioners' First Amendment argument.[7]

Given the factual similarity between this case and *Madsen*, we conclude that the governmental interests underlying the injunction in *Madsen*—ensuring public safety and order, promoting the free flow of traffic on streets and sidewalks, protecting property rights, and protecting a woman's freedom to seek pregnancy-related services,[8] *ibid.*—also underlie the injunction here, and in combination are certainly significant enough to justify an appropriately tailored injunction to secure unimpeded physical access to the clinics.

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[7] JUSTICE SCALIA in dissent contends that the District Court's reliance on "public safety" was not permissible because only the government may seek an injunction based on that factor. But the District Court's reliance on this factor was not to use it as an element which supported respondents' claim for an injunction. Rather, the court used this factor as a basis for rejecting petitioners' challenge to the injunction on First Amendment grounds.

[8] We need not decide whether the governmental interest in protecting the medical privacy and well-being of patients "held 'captive' by medical circumstance"—at issue in *Madsen*—is implicated here. That interest was relevant in *Madsen* because patients *while inside the clinic* heard the chanting and shouting of the protesters and suffered increased health risks as a result. See *id.*, at 772. Here, although the District Court found that the loud voices of sidewalk counselors could be heard inside the clinic, petitioners do not challenge the injunction's ban on excessive noise.

C

We strike down the floating buffer zones around people entering and leaving the clinics because they burden more speech than is necessary to serve the relevant governmental interests. The floating buffer zones prevent defendants—except for two sidewalk counselors, while they are tolerated by the targeted individual—from communicating a message from a normal conversational distance or handing leaflets to people entering or leaving the clinics who are walking on the public sidewalks. This is a broad prohibition, both because of the type of speech that is restricted and the nature of the location. Leafletting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment, and speech in public areas is at its most protected on public sidewalks, a prototypical example of a traditional public forum. See, *e. g., Boos* v. *Barry*, 485 U. S. 312, 322 (1988); *United States* v. *Grace*, 461 U. S. 171, 180 (1983). On the other hand, we have before us a record that shows physically abusive conduct, harassment of the police that hampered law enforcement, and the tendency of even peaceful conversations to devolve into aggressive and sometimes violent conduct. In some situations, a record of abusive conduct makes a prohibition on classic speech in limited parts of a public sidewalk permissible. See, *e. g.*, Part II–D, *infra; Madsen, supra,* at 769–770. We need not decide whether the governmental interests involved would ever justify some sort of zone of separation between individuals entering the clinics and protesters, measured by the distance between the two. We hold here that because this broad prohibition on speech "floats," it cannot be sustained on this record.

Since the buffer zone floats, protesters on the public sidewalks who wish (i) to communicate their message to an incoming or outgoing patient or clinic employee and (ii) to remain as close as possible (while maintaining an acceptable conversational distance) to this individual, must move as the individual moves, maintaining 15 feet of separation. But this would be difficult to accomplish at, for instance, the GYN Womenservices clinic in Buffalo, one of the respondent clinics. The sidewalk outside the clinic is 17-feet wide. This means that protesters who wish to walk alongside an individual entering or leaving the clinic are pushed into the street, unless the individual walks a straight line on the outer edges of the sidewalk. Protesters could presumably walk 15 feet behind the individual, or 15 feet in front of the individual while walking backwards. But they are then faced with the problem of watching out for other individuals entering or leaving the clinic who are heading the opposite way from the individual they have targeted. With clinic escorts leaving the clinic to pick up incoming patients and entering the clinic to drop them off, it would be quite difficult for a protester who wishes to engage in peaceful expressive activities to know how to remain in compliance with the injunction.[9] This lack of certainty leads to a substantial risk that much more speech will be burdened than the injunction by its terms prohibits. That is, attempts to stand 15 feet from someone entering or leaving a clinic and to communicate a message—certainly protected on the face of the injunction—will be hazardous if one wishes to remain in compliance with the injunction.[10] Since there may well be other

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[9] We suspect that these floating buffer zones would also be quite difficult for a district court to enforce. Contempt proceedings would likely focus on whether protesters who thought they were keeping pace with the targeted individual from a distance of 15 feet actually strayed to within 14 or 13 feet of the individual for a certain period of time.

[10] Significantly, the District Judge himself expressed this same concern at the September 27 TRO hearing, stating his understanding that a "moving" buffer zone would be quite infeasible. Nevertheless, the terms of the TRO and the injunction provide exactly that, and the District Court never authoritatively put a limiting construction on the injunction.

JUSTICE BREYER in dissent places great stress on the District Court's statement at this September 27 hearing, and concludes that the District ways to both effect such separation and yet provide certainty (so that speech protected by the injunction's terms is not burdened), we conclude that the floating buffer zones burden more speech than necessary to serve the relevant governmental interests. Because we strike down the floating buffer zones, we do not address the constitutionality of the "cease and desist" provision that allows sidewalk counselors within those buffer zones.

Court never understood the TRO, or even the injunction, to contain floating buffer zones. We believe JUSTICE BREYER misreads the record.

First, despite the District Court's statements at the September 27 hearing, the court held petitioner Schenck and one other defendant in contempt for violating paragraph 1(a) of the TRO, because they came within 15 feet of an individual attempting to enter the clinic even though they were more than 15 feet from any doorway or driveway entrance to the clinic. See *Pro-Choice Network of Western N. Y.* v. *Project Rescue Western N. Y.*, No. 90–CV–1004A (WDNY, Sept. 28, 1992), pp. 7–8, 20–21 (doctor parked several hundred feet from clinic and then attempted to walk on sidewalk toward clinic; contemnors followed doctor the length of the sidewalk, yelling at him from a distance of only a few feet, up until the point where doctor was 10 to 20 feet from clinic driveway entrance; court held that this conduct violates the TRO's "proscription against demonstrating within fifteen feet of any person seeking access to a clinic"). Thus, we conclude that the District Court read the TRO the way an ordinary person would—to create a floating buffer zone.

Second, the District Court's opinion accompanying the issuance of the preliminary injunction shows that the court interpreted the injunction to contain floating buffer zones. The court described paragraph (b) of the injunction as "setting *dual* 'clear zones' of fifteen feet around entrances *and fifteen feet around people and vehicles seeking access.*" 799 F. Supp., at 1434 (emphasis added). And the injunction by its terms bans "demonstrating" within 15 feet of clinic entrances "*or* within fifteen feet of any person or vehicle seeking access to [the clinic]." (Emphasis added.)

Finally, we note that no judge of the en banc Court of Appeals expressed doubt that the injunction included floating buffer zones, cf. 67 F. 3d, at 389, n. 4 (discussing "how far from a clinic a floating buffer zone may reach," not, as JUSTICE BREYER suggests, whether the injunction creates floating buffer zones at all), and that none of the parties before us has suggested that the injunction does not provide for such zones.

We likewise strike down the floating buffer zones around vehicles. Nothing in the record or the District Court's opinion contradicts the commonsense notion that a more limited injunction—which keeps protesters away from driveways and parking lot entrances (as the fixed buffer zones do) and off the streets, for instance—would be sufficient to ensure that drivers are not confused about how to enter the clinic and are able to gain access to its driveways and parking lots safely and easily. In contrast, the 15-foot floating buffer zones would restrict the speech of those who simply line the sidewalk or curb in an effort to chant, shout, or hold signs peacefully. We therefore conclude that the floating buffer zones around vehicles burden more speech than necessary to serve the relevant governmental interests.

D

We uphold the fixed buffer zones around the doorways, driveways, and driveway entrances. These buffer zones are necessary to ensure that people and vehicles trying to enter or exit the clinic property or clinic parking lots can do so. As in *Madsen,* the record shows that protesters purposefully or effectively blocked or hindered people from entering and exiting the clinic doorways, from driving up to and away from clinic entrances, and from driving in and out of clinic parking lots. Based on this conduct—both before and after the TRO issued—the District Court was entitled to conclude that the only way to ensure access was to move back the demonstrations away from the driveways and parking lot entrances. Similarly, sidewalk counselors—both before and after the TRO—followed and crowded people right up to the doorways of the clinics (and sometimes beyond) and then tended to stay in the doorways, shouting at the individuals who had managed to get inside. In addition, as the District Court found, defendants' harassment of the local police made it far from certain that the police would be able to quickly and effectively counteract protesters who blocked doorways or threatened the safety of entering patients and employees. Based on this conduct, the District Court was entitled to conclude that protesters who were allowed close to the entrances would continue right up to the entrance, and that the only way to ensure access was to move *all* protesters away from the doorways.[11] Although one might quibble about whether 15 feet is too great or too small a distance if the goal is to ensure access, we defer to the District Court's reasonable assessment of the number of feet necessary to keep the entrances clear. See *Madsen,* 512 U. S., at 769–770 ("[S]ome deference must be given to the state court's familiarity with the facts and the background of the dispute between the parties even under our heightened review").

Petitioners claim that unchallenged provisions of the injunction are sufficient to ensure this access, pointing to the bans on trespassing, excessive noise, and "blocking, impeding or obstructing access to" the clinics. They claim that in light of these provisions, the only effect of a ban on "demonstrating" within the fixed buffer zone is "a ban on peaceful, nonobstructive demonstrations on public sidewalks or rights of way." Brief for Petitioners 47. This argument, however, ignores the record in this case. Based on defendants' past conduct, the District Court was entitled to conclude that some of the defendants who were allowed within 5 to 10 feet of clinic entrances would not merely engage in stationary, nonobstructive demonstrations but would continue to do what they had done before: aggressively follow and crowd individuals right up to the clinic door and then refuse to move, or purposefully mill around parking lot entrances in an effort to impede or block the progress of cars. And because defendants' harassment of police hampered the ability of the police to respond quickly to a problem, a prophylactic measure was even more appropriate. Cf. *Burson* v. *Freeman,* 504 U. S. 191, 206–207 (1992) (upholding 100-foot "no-campaign zone" around polling places: "Intimidation and interference laws fall short of serving a State's compelling interests because they 'deal with only the most blatant and specific attempts' to impede elections. Moreover, because law enforcement officers generally are barred [under state law] from the vicinity of the polls to avoid any appearance of coercion in the electoral process, many acts of interference would go undetected. These undetected or less than blatant acts may nonetheless drive the voter away before remedial action can be taken" (citations omitted)). The ban on "blocking, impeding, and obstructing access" was therefore insufficient by itself to solve the problem, and the fixed buffer zone was a necessary restriction on defendants' demonstrations.

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[11] The fact that the injunction allows two sidewalk counselors into the fixed buffer zones—subject to the "cease and desist" provision—does not detract from this conclusion. It is clear from the District Court's opinion that its decision to allow two sidewalk counselors inside the buffer zones was an effort to bend over backwards to "accommodate" defendants' speech rights. See 799 F. Supp., at 1434. Because the District Court was entitled to conclude on this record that the only feasible way to shield individuals within the fixed buffer zone from unprotected conduct—especially with law enforcement efforts hampered by defendants' harassment of the police—would have been to keep the entire area clear of defendant protesters, the District Court's extra effort to enhance defendants' speech rights by allowing an exception to the fixed buffer zone should not redound to the detriment of respondents.

Petitioners also argue that under *Madsen,* the fixed buffer zones are invalid because the District Court could not impose a "speech-restrictive" injunction (or TRO) without first trying a "non-speech-restrictive" injunction, as the trial court did in *Madsen.* But in *Madsen* we simply stated that the failure of an initial injunction "to accomplish its purpose may be taken into consideration" in determining the constitutionality of a later injunction. 512 U. S., at 770. The fact that the District Court's TRO included a "speech-restrictive" provision certainly does not mean that the subsequent injunction is automatically invalid. Since we can uphold the injunction under the *Madsen* standard without this "consideration" being present, petitioners' argument fails.

Finally, petitioners make several arguments that may be quickly refuted. They argue that, unlike *Madsen*, there is "no extraordinary record of pervasive lawlessness," Brief for Petitioners 45, and that the buffer zones are therefore unnecessary. As explained above, our review of the record convinces us that defendants' conduct was indeed extraordinary, and that based on this conduct the District Court was entitled to conclude that keeping defendants away from the entrances was necessary to ensure access. Petitioners also argue that the term "demonstrating" is vague. When the injunction is read as a whole, see *Grayned* v. *City of Rockford*, 408 U. S. 104, 110 (1972), we believe that people "of ordinary intelligence" (and certainly defendants, whose demonstrations led to this litigation in the first place) have been given "a reasonable opportunity to know what is prohibited," *id.*, at 108.

Petitioners also contend that the "cease and desist" provision which limits the exception for sidewalk counselors in connection with the fixed buffer zone is contrary to the First Amendment. We doubt that the District Court's reason for including that provision—"to protect the right of the people approaching and entering the facilities to be left alone"—accurately reflects our First Amendment jurisprudence in this area. *Madsen* sustained an injunction designed to secure physical access to the clinic, but not on the basis of any generalized right "to be left alone" on a public street or sidewalk. As we said in *Madsen*, quoting from *Boos* v. *Barry*, 485 U. S., at 322, "'[a]s a general matter, we have indicated that in public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment.'" 512 U. S., at 774. But as earlier noted, the entire exception for sidewalk counselors was an effort to enhance petitioners' speech rights, see n. 11, *supra,* and the "cease and desist" limitation must be assessed in that light.[12]

Petitioners and some of their *amici* attack the "cease and desist" provision accompanying the exception for sidewalk counselors as content based, because it allows a clinic patient to terminate a protester's right to speak based on, among other reasons, the patient's disagreement with the message being conveyed. But in *Madsen* we held that the injunction in that case was not content based, even though it was directed only at abortion protesters, because it was only abortion protesters who had done the acts which were being enjoined. Here, the District Court found that "[m]any of the

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[12] Although petitioners argue that our disapproval of the 300-foot no-approach zone in *Madsen* requires disapproval of the "cease and desist" provision, *Madsen* is easily distinguishable on this point, since the no-approach zone was eight times broader than the "buffer zone" deemed necessary to ensure access to the clinic in *Madsen.*

JUSTICE SCALIA in dissent suggests that our failure to endorse the District Court's reason for including the "cease and desist" provision requires us to reverse the District Court's decision setting the injunction's terms. This suggestion is inconsistent with our precedents. See, *e. g., Rutan* v. *Republican Party of Ill.,* 497 U. S. 62, 76 (1990) ("[A]lthough we affirm the Seventh Circuit's judgment . . . , we do not adopt the Seventh Circuit's reasoning"); *Smith* v. *Phillips,* 455 U. S. 209, 215, n. 6 (1982) ("Respondent may, of course, defend the judgment below on any ground which the law and the record permit, provided the asserted ground would not expand the relief which has been granted"); *SEC* v. *Chenery Corp.,* 318 U. S. 80, 88 (1943) ("[W]e do not disturb the settled rule that, in reviewing the decision of a lower court, it must be affirmed if the result is correct 'although the lower court relied upon a wrong ground or gave a wrong reason'" (quoting *Helvering* v. *Gowran,* 302 U. S. 238, 245 (1937)); *Langnes* v. *Green,* 282 U. S. 531, 536–537 (1931) ("[T]he entire record is before this court with power to review the action of the court of appeals and direct such disposition of the case as that court might have done upon the writ of error sued out for the review of the [district] court"); *Williams* v. *Norris,* 12 Wheat. 117, 120 (1827) (Marshall, C. J.) ("If the judgment [of the lower court] should be correct, although the reasoning, by which the mind of the Judge was conducted to it, should be deemed unsound, that judgment would certainly be affirmed in [this] Court").

'sidewalk counselors' and other defendants ha[d] been arrested on more than one occasion for harassment, yet persist in harassing and intimidating patients, patient escorts and medical staff." 799 F. Supp., at 1425. These counselors remain free to espouse their message outside the 15-foot buffer zone, and the condition on their freedom to espouse it within the buffer zone is the result of their own previous harassment and intimidation of patients.[13]

* * *

The judgment of the Court of Appeals is affirmed in part and reversed in part, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, with whom JUSTICE KENNEDY and JUSTICE THOMAS join, concurring in part and dissenting in part.

Instead of evaluating the injunction before us on the basis of the reasons for which it was issued, the Court today postulates other reasons that *might* have justified it and pronounces those never-determined reasons adequate. This is contrary to the settled practice governing appellate review of injunctions, and indeed of all actions committed by law to the initial factfinding, predictive and policy judgment of an entity other than the appellate court, see, *e. g., SEC* v. *Chenery Corp.,* 318 U. S. 80 (1943). The Court's opinion also claims for the judiciary a prerogative I have never heard of: the power to render decrees that are in its view justified by concerns for public safety, though not justified by the need to remedy the grievance that is the subject of the lawsuit. I dissent.

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[13] The defendants, including the two petitioners, stipulated before the District Court that "[i]f [the District Court] concludes that some or all of the relief requested by plaintiffs should be granted on a preliminary injunctive basis, defendants will consent to the entry of such an injunction against each and every one of them." App. to Pet. for Cert. A–136.

I

The most important holding in today's opinion is tucked away in the seeming detail of the "cease-and-desist" discussion in the penultimate paragraph of analysis: There is no right to be free of unwelcome speech on the public streets while seeking entrance to or exit from abortion clinics. *Ante*, at 383–384. "As we said in *Madsen* [v. *Women's Health Center, Inc.*, 512 U. S. 753 (1994)], quoting from *Boos* v. *Barry*, 485 U. S., at 322, '[a]s a general matter, we have indicated that in public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment.'" *Ante*, at 383 (internal quotation marks omitted). But the District Court in this case (like the Court of Appeals) believed that there *was* such a right to be free of unwanted speech, and the validity of the District Court's action here under review cannot be assessed without taking that belief into account. That erroneous view of what constituted remediable harm shaped the District Court's injunction, and it is impossible to reverse on this central point yet maintain that the District Court framed its injunction to burden "no more speech than necessary," *Madsen* v. *Women's Health Center, Inc.*, 512 U. S. 753, 765 (1994), to protect *legitimate* governmental interests.

The District Court justified the "fixed buffer" provision of the injunction on two separate grounds, each apparently tied to a different feature of the provision. First, the court said, the fixed buffer zone was "necessary to ensure that people . . . seeking access to the clinics will not be impeded." *Pro-Choice Network of Western New York* v. *Project Rescue Western New York*, 799 F. Supp. 1417, 1434 (WDNY 1992). And second, "the 'clear zones' will prevent defendants from crowding patients and invading their personal space." *Ibid.* Thus, the fixed buffer had a dual purpose: In order to prevent physical obstruction of access, it excluded crowds of protesters from a 15-foot zone around clinic entrances, while permitting two nonobstructive "sidewalk counselors" to enter that zone. (Allowing a small number of protesters is a common practice in picketing injunctions, *e. g., Mine Workers* v. *Bagwell,* 512 U. S. 821, 823 (1994), and of course a required practice when no more than that is necessary, see *Madsen, supra,* at 765.) And the second purpose of the fixed buffer provision, the purpose that justified the requirement that even the two nonobstructive sidewalk counselors "cease and desist" if the "targeted person" did not wish to hear them, was to assure "personal space" on the public streets—or, as the District Court described it in the next paragraph of its order, "to protect the right of people approaching and entering the facilities to be left alone." 799 F. Supp., at 1435.

The terms of the injunction's cease-and-desist provision make no attempt to conceal the fact that the supposed right to be left alone, and not the right of unobstructed access to clinics, was the basis for the provision:

> "*[N]o one is required to accept or listen to sidewalk counseling,* and . . . if anyone or any group of persons who is sought to be counseled *wants not to have counseling,* wants to leave, or walk away, they shall have the absolute right to do that, and in such event all persons seeking to counsel that person or group of persons shall cease and desist from such counseling, and shall thereafter be governed by the provisions of [the injunction] pertaining to not demonstrating within fifteen feet of persons seeking access to or leaving a facility." *Id.,* at 1440 (preliminary injunction, paragraph 1(c)) (emphasis added).

It is difficult to imagine a provision more dependent upon the right to be free of unwanted speech that today's opinion rejects as applied to public streets. The District Court's own explanation of the provision makes that dependency even more starkly clear:

> "Th[e] 'cease and desist' provision is necessary in order to protect the right of people approaching and entering the facilities *to be left alone.*
>
> ". . . [Defendants] argue that, because their 'sidewalk counseling' occurs on a public sidewalk, they cannot be forced to cease communicating their message just because their audience may be *unwilling to hear it. The Court, however, rejects this argument.*
>
> . . . . .
>
> ". . . The evidence adduced at the hearings clearly shows that, even when women seeking access to the clinics signal their desire to be left alone, defendants continue to follow right alongside them and persist in *communicating their message.* [W]omen seeking access to plaintiffs' facilities cannot, as a practical matter, escape *defendants' message. . . .*
>
> ". . . [T]he . . . 'cease and desist' provision advances the values of the marketplace of ideas by permitting listeners to exercise their autonomy to make their own determinations among competing ideas. *Once a women seeking access to one of the clinics has made a determination not to listen to defendants' message, defendants must respect her choice.*" *Id.*, at 1435–1436 (emphasis added).

II

The District Court thought the supposed "right to be left alone" central enough to its order to devote two full pages in the federal reports to the subject, *ibid.*, and both majority opinions of the Court of Appeals discussed it *in extenso*, 67 F. 3d 377, 391–393 (CA2 1995); *id.*, at 395–397. The magic of today's opinion for this Court is that it renders this essential element of the injunction that was issued irrelevant by the simple device of approving instead an injunction that the

District Court (in the exercise of its discretion) chose *not* to issue—viz., an absolute ban on all protesters within the 15-foot zone. *Ante,* at 381, n. 11.

The Court asserts (in carefully selected words) that "the District Court *was entitled to conclude* that the only way to ensure access was to move back the demonstrations." *Ante,* at 380 (emphasis added). And again: "[T]he District Court *was entitled to conclude on this record* that the only feasible way to shield individuals within the fixed buffer zone from unprotected conduct . . . would have been to keep the entire area clear of defendant protesters." *Ante,* at 381, n. 11 (emphasis added). And (lest the guarded terminology be thought accidental), yet a third time: "Based on [the defendants'] conduct, the District Court *was entitled to conclude* . . . that the only way to ensure access was to move *all* protesters away from the doorways." *Ante,* at 381 (first emphasis added; second in original). But prior to the question whether it *was entitled to conclude that* is the question whether it *did conclude that.* We are not in the business (or never used to be) of making up conclusions that the trial court *could permissibly* have reached on questions involving assessments of fact, credibility, and future conduct—and then affirming on the basis of those posited conclusions, whether the trial court *in fact* arrived at them or not.[1] That is so even in ordinary cases, but it is doubly true when we review a trial court's order imposing a prior restraint upon speech. As we said in *NAACP* v. *Claiborne Hardware Co.,* 458 U. S. 886 (1982), when a court decides to impose a speech-restrictive injunction, the conclusions it reaches must be "supported by findings that adequately disclose the[ir] evidentiary basis . . . , that carefully identify the impact of [the defendants'] unlawful conduct, and that recognize the importance of avoiding the imposition of punishment for constitutionally protected activity." *Id.*, at 933–934.

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[1] The Court's lengthy citation of cases standing for the proposition that an appellate court can affirm on a *mandatory legal* ground different from that relied upon by the trial court, *ante,* at 384, n. 12, has no relevance to the question whether an appellate court can substitute its own assessments of past facts, of future probabilities, and hence of injunctive necessities, for the assessments made (and required to be made) by the trial court.

The Court candidly concedes that the nonexistent "right to be left alone" underlay the District Court's imposition of the cease-and-desist provision. *Ante,* at 383. It appears not to grasp, however, the decisive import of this concession—which is that the District Court did not think it necessary to exclude *all* demonstrators from the buffer zone as a means of preventing physical obstruction of clinic entrances or other violations of law (other than the faux violation of intruding upon the speech targets' "private space"). Thus, the Court's statements about what "the District Court was entitled to conclude" are not only speculative (which is fatal enough) but positively contrary to the record of what the District Court *did* conclude—which was that permitting a few demonstrators within the buffer zone was perfectly acceptable, except when it would infringe the clinic employees' and patrons' right to be free of unwanted speech on public streets. In fact, the District Court expressly stated that if *in the future* it found that a complete ban on speech within the buffer zone *were* necessary, it would impose one. 799 F. Supp., at 1436, n. 13.

I do not grasp the relevance of the Court's assertions that admitting the two counselors into the buffer zone was "an effort to enhance petitioners' speech rights," *ante,* at 383–384, "an effort to bend over backwards to 'accommodate' defendants' speech rights," *ante,* at 381, n. 11, and that "the 'cease and desist' limitation must be assessed in that light," *ante,* at 384. If our First Amendment jurisprudence has stood for anything, it is that courts have *an obligation* "to enhance speech rights," and *a duty* "to bend over backwards to 'accommodate' speech rights." That principle was reaffirmed in *Madsen,* which requires that a judicial injunction against speech burden "no more speech than *necessary* to serve a *significant* government interest." 512 U. S., at 765 (emphasis added). Thus, if the situation confronting the District Court *permitted* "accommodation" of petitioners' speech rights, it *demanded* it. The Court's effort to recharacterize this responsibility of special care imposed by the First Amendment as some sort of judicial gratuity is perhaps the most alarming concept in an opinion that contains much to be alarmed about.

III

I disagree with the Court's facile rejection of the argument that no cause of action was properly found to support the present injunction. Petitioners contend that the only cause of action which could conceivably support the injunction is a trespass claim; but that cannot support the restrictions at issue, which are designed, as the District Court stated, to prevent obstruction of access and the invasion of "personal space," 799 F. Supp., at 1434, rather than to prevent trespass.

The Court responds by pointing out that the case contains a nontrespass claim under N. Y. Civ. Rights Law § 40–c(2) (McKinney 1992), which provides that "[n]o person shall, because of . . . sex . . . be subjected to any discrimination in his civil rights, or to any harassment . . . in the exercise thereof, by any other person." That is true enough, but it seems to me clear that that imaginative state-law claim cannot support a preliminary injunction because it does not have a probability of success on the merits. See 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948.3 (2d ed. 1995). It is, to put it mildly, far from apparent that seeking to prevent both men and women from aborting both male and female human fetuses constitutes discrimination on the basis of sex. Moreover, the reasoning which led the District Court to conclude otherwise has been specifically rejected by this Court. The District Court wrote: "Having demonstrated a likelihood of success on the merits of their federal § 1985(3) claim, plaintiffs have also, by definition, demonstrated a likelihood of success on their claim under N. Y. Civ. Rights Law § 40–c." 799 F. Supp., at 1431. Subsequently, however, this Court's opinion in *Bray* v. *Alexandria Women's Health Clinic*, 506 U. S. 263, 269–273 (1993), held that claims of the sort at issue here do *not* constitute discrimination on the basis of sex under 42 U. S. C. § 1985(3). Since there is also, as far as I have been able to determine, no decision by any New York court saying that they constitute sex discrimination under § 40–c, there is no basis on which the District Court could have concluded (or this Court could affirm) that the chance of success on this claim was anything other than a long shot.[2]

The Court proceeds from there to make a much more significant point: An injunction on speech may be upheld even if not justified on the basis of the interests asserted by the plaintiff, as long as it serves "public safety." "[I]n assessing a First Amendment challenge, a court . . . inquires into the governmental interests that are protected by the injunction, which may include an interest in public safety and order. . . . Here, the District Court cited public safety as one of the interests justifying the injunction . . . . [T]he fact that 'threat to public safety' is not listed anywhere in respondents' complaint as a claim does not preclude a court from relying on the significant governmental interest in public safety in assessing petitioners' First Amendment argument." *Ante*, at 375–376.

This is a wonderful expansion of judicial power. Rather than courts' being limited to according relief justified by the complaints brought before them, the Court today announces that a complaint gives them, in addition, ancillary power to decree what may be necessary to protect—not the plaintiff, but *the public interest!* Every private suit makes the district judge a sort of one-man Committee of Public Safety. There is no precedent for this novel and dangerous proposition. In *Madsen,* the Court says, "it was permissible to move protesters off the sidewalk and to the other side of the street in part because other options would block the free flow of traffic on the streets and sidewalks." *Ante,* at 375; see also *Madsen,* 512 U. S., at 769. But acknowledging, as we did in *Madsen,* that some remedial options are eliminated because they conflict with considerations of public safety is entirely different from asserting, as the Court does today, that public safety can provide part of the *justification for the remedy.*[3] The only other case cited by the Court is *Milk Wagon Drivers* v. *Meadowmoor Dairies, Inc.,* 312 U. S. 287, 294–295 (1941). *Ante,* at 375. But *Milk Wagon Drivers* upheld an injunction against a union's intimidation of storekeepers, not because "the public interest" demanded it, but because the storekeepers were customers of the plaintiff dairy, which it was the purpose and effect of the intimidation to harm. 312 U. S., at 294–295.

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[2] The Court contends that petitioners only raise the issue whether the § 40–c cause of action is "valid," and not the issue whether the District Court erred in concluding that the claim was "likely to succeed." *Ante*, at 375. The concept of an invalid claim that is likely to succeed is an interesting one, but there is no doubt that petitioners did not entertain it: They plainly challenged "[t]he district court's ruling that respondents were likely to prevail on their state antidiscrimination claim." Brief for Petitioners 32; see also *id.*, at 15.

We have in our state and federal systems a specific entity charged with responsibility for initiating action to guard the public safety. It is called the Executive Branch. When the public safety is threatened, that branch is empowered, by invoking judicial action and by other means, to provide protection. But the Judicial Branch has hitherto been thought powerless to act except as invited by someone other than itself. That is one of the reasons it was thought to be "the least dangerous to the political rights of the [C]onstitution"—because it "can take no active resolution whatever" and "may truly be said to have neither FORCE nor WILL, but merely judgment." The Federalist No. 78, p. 396 (M. Beloff ed. 1987). It is contrary to the most fundamental principles of separation of powers for the District Court to decree measures that would eliminate obstruction of traffic, in a lawsuit which has established nothing more than trespass.[4]

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[3] *Madsen* also refers to "public safety" as one of the government interests on which the state court relied in justifying the challenged injunction, 512 U. S., at 768, but nothing in our decision approved or relied upon that feature of the state court's approach.

* * *

Today's opinion makes a destructive inroad upon First Amendment law in holding that the validity of an injunction against speech is to be determined by an appellate court on the basis of what the issuing court might reasonably have found as to necessity, rather than on the basis of what it in fact found. And it makes a destructive inroad upon the separation of powers in holding that an injunction may contain measures justified by the public interest apart from remediation of the legal wrong that is the subject of the complaint. Insofar as the first point is concerned, the Court might properly have upheld the fixed buffer zone without the cease-and-desist provision, since the District Court evidently did conclude (with proper factual support, in my view) that limiting the protesters to two was necessary to prevent repetition of the obstruction of access that had occurred in the past. But even that more limited injunction would be invalidated by the second point: the fact that no cause of action related to obstruction of access was properly found to support the injunction. Accordingly, I join Parts I, II–A, and II–C, but dissent from the Court's judgment upholding the fixed buffer zone, and would reverse the decision of the Court of Appeals in its entirety.

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[4] The Court approves reliance on "public safety" not "as an element which supported respondents' claim for an injunction," but only "as a basis for rejecting petitioners' challenge to the injunction on First Amendment grounds." *Ante*, at 376, n. 7. Such a distinction makes no sense. In the context before us here, whether there is "a basis for rejecting petitioners' challenge to the injunction on First Amendment grounds" depends entirely on whether the "element[s] which suppor[t] the respondents' claim for an injunction" are strong enough. The issues are one and the same. *Any* injunction must be justified by the elements that support it. The involvement of First Amendment rights does not alter that rule, but merely increases the degree of justification required. Of course, illogical or not, by simply saying so, the Court can limit its novel "public safety" rationale to injunctions involving the freedom of speech. But I would hardly consider that a small and unimportant area for the newly created judicial Committees of Public Safety to control.

JUSTICE BREYER, concurring in part and dissenting in part.

Words take on meaning from context. Considered in context, the preliminary injunction's language does not necessarily create the kind of "floating bubble" that leads the Court to find the injunction unconstitutionally broad. See Part II–C, *ante.* And until quite recently, no one thought that it did. The "floating bubble" controversy apparently arose during oral argument before the en banc Court of Appeals. The Court of Appeals then gave the District Judge, who has ongoing responsibility for administering the injunction, an initial opportunity to consider the petitioners' claim and, if necessary, to clarify or limit the relevant language. 67 F. 3d 377, 389, n. 4 (CA2 1995) (en banc). The Court of Appeals' response, in my view, is both legally proper and sensible. I therefore would affirm its judgment.

The preliminary injunction's key language prohibits demonstrating "within fifteen feet of any person or vehicle seeking access to or leaving such facilities." This language first appeared in the temporary restraining order (TRO), where it defined the precise scope of the order's prohibition against blocking "ingress into or egress from" facilities. That portion of the TRO enjoined the defendants from

> "trespassing on, sitting in, blocking, impeding or obstructing access to, ingress into or egress from any facility at which abortions are performed in the Western District of New York, including demonstrating *within*

> *15 feet of any person seeking access to or leaving such facilities* . . . ." App. 23 (emphasis added).

Before the District Court issued the TRO, Reverend Schenck asked whether this language would create a floating bubble. The District Court replied:

> "THE COURT: I don't think that was the intent. . . . [W]e're talking about . . . free access. . . . It's not a moving 15 feet.
>
> "REV. SCHENCK: So in other words, you're speaking of the facility itself?
>
> "THE COURT: I think that's what we were talking about . . . . We're talking fifteen feet from [*e. g.*, a doorway] to go right out to where ever you're going. . . . [M]y gosh, you would never be able . . . to deal with that if it was a moving length.
>
> "It's fifteen feet from the entrance. . . . [Y]ou have to apply common sense . . . and [an interpretation of the language creating a moving zone] would not in any way at all be a fair interpretation of what we're talking about.
>
> "REV. SCHENCK: Well, I'm glad you pointed that out . . . . [T]here is, I think, a very high degree of ambiguity . . . and no one . . . said what we're talking about here is 15 feet from an entranceway.
>
> "THE COURT: I think everyone is clear on that now." App. to Reply Brief for Petitioners A–2 to A–3.

The identical key language (with the added words "or vehicle") then found its way into the preliminary injunction, issued 16 months later, where its presence apparently remained subject to the "no-float" understanding that the District Court had called "clear." The preliminary injunction simply separated the key language from the words that had immediately preceded it in the TRO (the "trespassing on, sitting in, blocking . . . ingress into or egress from" language) and it added a phrase that more specifically described the fixed zone as

> "fifteen feet from either side or edge of, or in front of, doorways or doorway entrances, parking lot entrances, driveways and driveway entrances . . . ."

There is little reason to believe that the District Court, in relettering the paragraphs or inserting this new phrase, thereby intended to give the key language a significantly different meaning or a new purpose other than its original purpose of narrowing through specification the broader "blocking . . . ingress" language, now appearing a little earlier on in the injunction. The District Court's reference, in an accompanying opinion, to "dual 'clear zones' of fifteen feet around entrances and fifteen feet around people and vehicles seeking access," see *ante*, at 379, n. 10, by itself (and it is by itself) shows little, if anything, more than a "bubble" that surrounds an individual within or just beyond a fixed zone. In all other respects, given the presence of a new additional narrowing phrase—the phrase that speaks of, *e. g.*, "fifteen feet from either side"—the key language at issue here would simply have become redundant.

The District Court's and the parties' subsequent words and deeds suggest that the key language has had no significant independent injunctive life. The contempt motions and orders under the TRO, for example, refer to violations of a fixed 15-foot zone from entrances (though in one instance, after counsel repeated the District Court's "no moving zone" clarification (quoted *supra*, at 396), Record, Doc. No. 232, pp. 276–279, the court found that a "totality" of the defendant's conduct, which involved serious obstruction within "10 to 20 feet" of an entrance, violated two provisions of the TRO including the key language. See *ante*, at 379, n. 10; Record, Doc. No. 263, pp. 6, 8). The contempt motions and orders, however, say nothing about violations of a bubble floating outside the fixed entrance zones—though the facts suggest that the contemnors would have violated such floating zones had the TRO called them into existence. Nor is there anything in the many District Court filings in respect to the preliminary injunction that suggests an intent to create a floating bubble of the sort contemplated by this Court. The diagrams that plaintiffs submitted to clarify the injunction's scope contain no reference to a floating zone. Rather, they are marked to indicate 15-foot fixed buffer zones from entrances to clinic property. See Appendix B, *infra.*

In fact, at oral argument before the appeals court panel, counsel for the petitioners confirmed that the injunction's bubble did not "float" in the way contemplated by this Court. At that time an appeals court judge asked counsel (for the demonstrators) whether the 15-foot zone would apply after "someone leaves the abortion clinic and goes to a grocery store," perhaps "three miles away," and counsel replied as follows:

> "COUNSEL: I don't think that would [be] prohibit[ed] [by] the court's order. I think the court's order provides for a 15-foot setback or bubble zone around the clinic property . . . .
>
> "APPEALS COURT: Well, my question is to what extent can you . . . 'leave' and still be subject to this injunction?
>
> "COUNSEL: Maybe I just didn't see the full implications of the injunction, but I never considered that beyond the 15-foot bubble zone there would be this same restriction. Even I'm not arguing that the injunction goes that far. Maybe I just didn't see that but I didn't interpret it that way."

Not surprisingly, the appeals court's panel opinion did not mention floating bubbles. Nor did the parties mention the matter in subsequent District Court proceedings related to modifying or restoring the injunction—proceedings that took place after the Court of Appeals' panel decision invalidating the injunction, but before the Court of Appeals heard the case en banc and reversed. At the latter time, apparently for the first time, the parties agreed that the injunction's language produced a zone that moved in some way or another.

Given this posture, it is not surprising that the en banc Court of Appeals did not deny the existence of a floating bubble zone, but left the initial resolution of the floating bubble controversy to the District Court. The Court of Appeals addressed the parties' argument regarding what the court termed a "floating buffer"—an issue that had never been raised before—by holding that the "floating buffer" was permissible, 67 F. 3d, at 389, on the assumption that the District Court would apply it in a constitutional manner, *id.*, at 389, n. 4. Thus, the Court of Appeals did not definitively interpret the scope of the relevant language, but instead left it to the District Court to resolve in the first instance any linguistic ambiguity that might create a constitutional problem.

In my view, this action by the Court of Appeals was appropriate, and this Court should do the same. Appellate courts do not normally consider claims that have not been raised first in the District Court. *Singleton* v. *Wulff*, 428 U. S. 106, 120 (1976) (citing *Hormel* v. *Helvering*, 312 U. S. 552, 556 (1941)). There is no good reason to depart from this ordinary principle here. The District Court understands the history, and thus the meaning, of the language in context better than do we. If the petitioners show a need for interpretation or modification of the language, the District Court, which is directly familiar with the facts underlying the injunction, can respond quickly and flexibly. An appellate decision is not immediately necessary because the key language in the injunction has not yet created, nor does it threaten to create, any significant practical difficulty. No defendant in this case has been threatened with contempt for violating the ostensible floating bubble provision. Nor is there any realistic reason to believe that the provision will deter the exercise of constitutionally protected speech rights.

I recognize that the District Court, interpreting or reinterpreting the key language, might find that it creates some kind of bubble that "floats," perhaps in the way I mention above. See *supra,* at 397. But even then, the constitutional validity of its interpretation would depend upon the specific interpretation that the court then gave and the potentially justifying facts. Some bubbles that "float" in time or space would seem to raise no constitutional difficulty. For example, a 15-foot buffer zone that is "fixed" in place around a doorway but that is activated only when a clinic patient is present can be said to "float" in time or, to a small degree, in space. See Appendix B, *infra,* Diagram 1 (Point X). Another example of a possibly constitutional "floating" bubble would be one that protects a patient who alights from a vehicle at the curbside in front of the Buffalo GYN Womenservices clinic and must cross the two-foot stretch of sidewalk that is outside the 15-foot fixed buffer. See Appendix B, *infra,* Diagram 2 (Point Y). Other bubbles, such as a bubble that follows a clinic patient to a grocery store three miles away, apparently are of no interest to anyone in this case. A floating bubble that follows a patient who is walking along the sidewalk just in front of a clinic, but outside the 15-foot fixed zone, could raise a constitutional problem. See Appendix B, *infra,* Diagram 3 (Point Z). But the constitutional validity of that kind of bubble should depend upon the particular clinic and the particular circumstances to which the District Court would point in justification. The Court of Appeals wisely recognized that these matters should be left in the first instance to the consideration of the District Court.

In sum, ordinary principles of judicial administration would permit the District Court to deal with the petitioners' current objection. These principles counsel against this

Court's now offering its own interpretation of the injunction—an interpretation that is not obvious from the language and that has never been considered by the District Court. I do not see how the Court's review of the key language, in the absence of special need and in violation of those principles, can make the lower courts' difficult, ongoing, circumstance-specific task any easier. To the contrary, district judges cannot assure in advance, without the benefit of argument by the parties, that the language of complex, fact-based injunctions is free of every ambiguity that later interpretation or misinterpretation finds possible. And I see no special need here for the Court to make an apparently general statement about the law of "floating bubbles," which later developments may show to have been unnecessary or unwise.

Hence, I join all but Part II–C of the Court's opinion. I would affirm the judgment of the Court of Appeals in its entirety.

APPENDIX A TO OPINION OF BREYER, J.

"TEMPORARY RESTRAINING ORDER

"Upon hearing . . . it is hereby

"ORDERED THAT Defendants, the officers, directors, agents, and representatives of defendants, and all other persons whomsoever, known or unknown, acting in their behalf or in concert with them, and receiving actual notice of this Order, are:

"1. Temporarily enjoined and restrained in any manner or by any means from:

"(a) trespassing on, sitting in, blocking, impeding or obstructing access to, ingress into or egress from any facility at which abortions are performed in the Western District of New York, *including demonstrating within 15 feet of any person seeking access to or leaving such facilities,* except that sidewalk counseling by no more than two persons as specified in paragraph (b) shall be allowed;

"(b) physically abusing or tortiously harassing persons entering or leaving, working at or using any services at any facility at which abortions are performed; Provided, however, that sidewalk counseling, consisting of a conversation of a nonthreatening nature by not more than two people with each person they are seeking to counsel shall not be prohibited. Also provided that no one is required to accept or listen to sidewalk counseling and that if anyone who wants to, or who is sought to be counseled who wants to not have counseling, wants to leave, or walk away, they shall have the absolute right to do that, and in such event the persons seeking to counsel that person shall cease and desist from such counseling of that person. In addition, provided that this right to sidewalk counseling as defined herein shall not limit the right of the Police Department to maintain public order or reasonably necessary rules and regulations as they decide are necessary at each particular demonstration site;

"(c) making any excessively loud sound which disturbs, injures, or endangers the health or safety of any patient or employee of a health care facility where abortions are performed in the Western District of New York, nor shall any person make such sounds which interferes with the rights of anyone not in violation of this Order; . . .

". . . and it is further

"ORDERED that nothing in this Order shall be construed to limit Project Rescue participants' exercise of their legitimate First Amendment rights . . . ." App. 22–26 (emphasis added).

"PRELIMINARY INJUNCTION

"Upon consideration of the evidence introduced at a hearing . . . it is hereby

"ORDERED that defendants, the officers, directors, agents, and representatives of defendants, and all other persons whomsoever, known or unknown, acting in their behalf or in concert with them, and receiving actual or constructive notice of this Order, are:

"11. Enjoined and restrained in any manner or by any means from:

"(a) trespassing on, sitting in, blocking, impeding, or obstructing access to, ingress into or egress from any facility, including, but not limited to, the parking lots, parking lot entrances, driveways, and driveway entrances, at which abortions are performed in the Western District of New York;

"(b) demonstrating within fifteen feet from either side or edge of, or in front of, doorways or doorway entrances, parking lot entrances, driveways and driveway entrances of such facilities, or within fifteen feet of any person or vehicle seeking access to or leaving such facilities, except that the form of demonstrating known as sidewalk counseling by no more than two persons as specified in paragraph (c) shall be allowed;

"(c) physically abusing, grabbing, touching, pushing, shoving, or crowding persons entering or leaving, working at or using any services at any facility at which abortions are performed; provided, however, that sidewalk counseling consisting of a conversation of a non-threatening nature by not more than two people with each person or group of persons they are seeking to counsel shall not be prohibited. Also provided that no one is required to accept or listen to sidewalk counseling, and that if anyone or any group of persons who is sought to be counseled wants to not have counseling, wants to leave, or walk away, they shall have the absolute right to do that, and in such event all persons seeking to counsel that person or group of persons shall cease and desist from such counseling, and shall thereafter be governed by the provisions of paragraph (b) pertaining to not demonstrating within fifteen feet of persons seeking access to or leaving a facility. In addition, it is further provided that this right to sidewalk counseling as defined herein shall not limit the right of the Police Department to maintain public order or such reasonably necessary rules and regulations as they decide are necessary at each particular demonstration site;

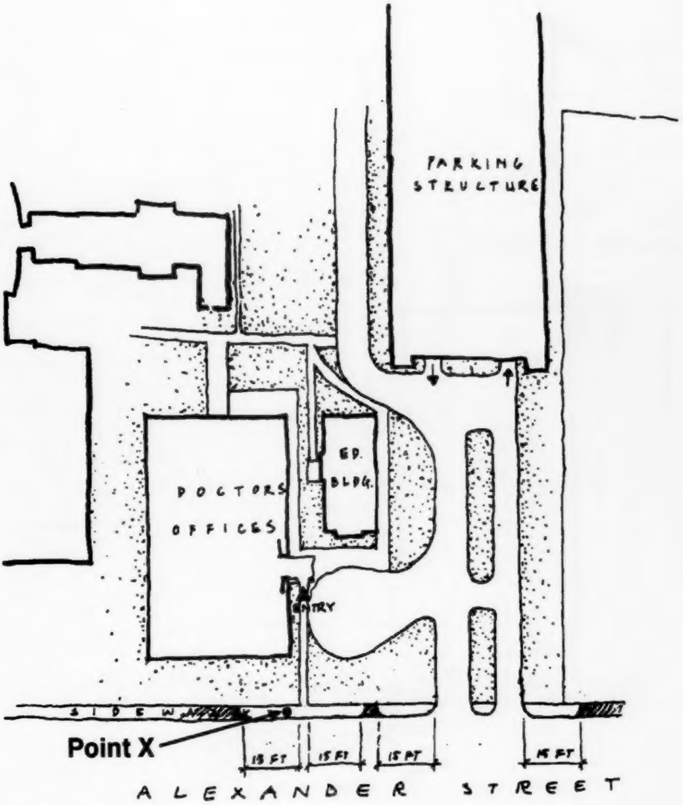
"(d) using any mechanical loudspeaker or sound amplification device or making any excessively loud sound which injures, disturbs, or endangers the health or safety of any patient or employee of a health care facility at which abortions are performed, nor shall any person make such sounds which interfere with the rights of anyone not in violation of this Order;

". . . and it is further

"ORDERED that nothing in this Order shall be construed to limit defendants and those acting in concert with them from exercising their legitimate First Amendment rights . . . ." 799 F. Supp., at 1440–1441.

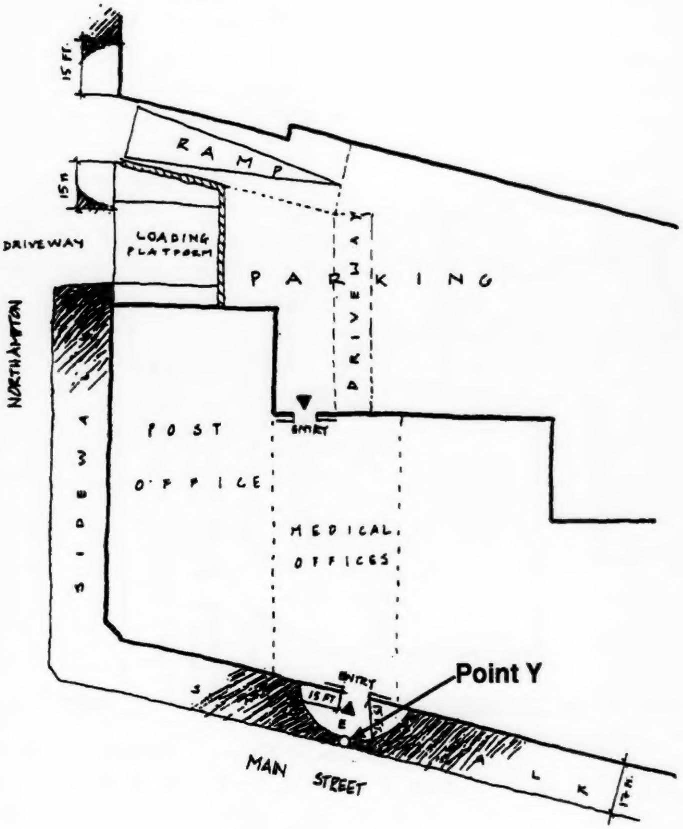
APPENDIX B TO OPINION OF BREYER, J.

Diagram 1


PARKING STRUCTURE
ED. BLDG.
DOCTORS OFFICES
ENTRY
SIDEWALK
Point X
15 FT
15 FT
15 FT
15 FT
ALEXANDER STREET

Alexander Women's Group
220 Alexander Street, Ste. 300
Rochester, NY 14607
(part of Genesee Hospital Complex)

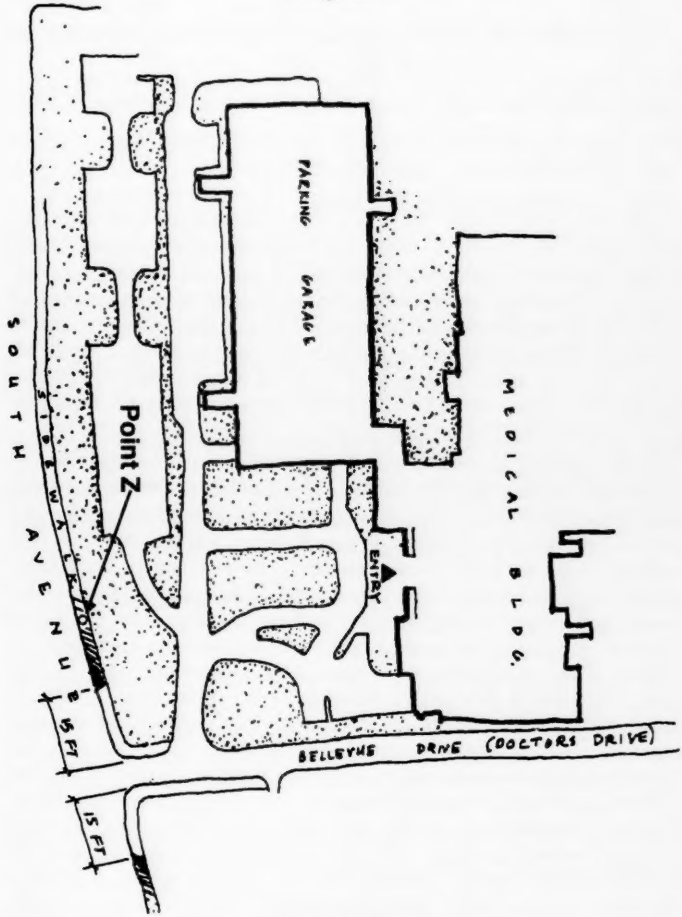
APPENDIX B TO OPINION OF BREYER, J.
Diagram 2


15 FT.
RAMP
15 FT
DRIVEWAY
LOADING PLATFORM
PARKING
DRIVEWAY
NORTHAMPTON
SIDEWALK
POST OFFICE
ENTRY
MEDICAL OFFICES
ENTRY
15 FT
Point Y
SIDEWALK
MAN STREET
15 FT.

Buffalo GYN Womenservices
1241 Main Street
Buffalo, NY 14607

APPENDIX B TO OPINION OF BREYER, J.

Diagram 3


SOUTH AVENUE
SIDEWALK
Point Z
PARKING GARAGE
MEDICAL BLDG.
ENTRY
15 FT
15 FT
BELLEVUE DRIVE (DOCTORS DRIVE)

The Family Medicine Center
885 South Ave.
Rochester, NY 14620
(part of Highland Hospital complex)

MARYLAND *v.* WILSON

CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 95–1268. Argued December 11, 1996—Decided February 19, 1997

After stopping a speeding car in which respondent Wilson was a passenger, a Maryland state trooper ordered Wilson out of the car upon noticing his apparent nervousness. When Wilson exited, a quantity of cocaine fell to the ground. He was arrested and charged with possession of cocaine with intent to distribute. The Baltimore County Circuit Court granted his motion to suppress the evidence, deciding that the trooper's ordering him out of the car constituted an unreasonable seizure under the Fourth Amendment. The Maryland Court of Special Appeals affirmed, holding that the rule of *Pennsylvania* v. *Mimms,* 434 U. S. 106, that an officer may as a matter of course order the driver of a lawfully stopped car to exit his vehicle, does not apply to passengers.

Held: An officer making a traffic stop may order passengers to get out of the car pending completion of the stop. Statements by the Court in *Michigan* v. *Long,* 463 U. S. 1032, 1047–1048 *(Mimms* "held that police may order *persons* out of an automobile during a [traffic] stop" (emphasis added)), and by Justice Powell in *Rakas* v. *Illinois,* 439 U. S. 128, 155, n. 4 *(Mimms* held "that *passengers* . . . have no Fourth Amendment right not to be ordered from their vehicle, once a proper stop is made" (emphasis added)), do not constitute binding precedent, since the former statement was dictum, and the latter was contained in a concurrence. Nevertheless, the *Mimms* rule applies to passengers as well as to drivers. The Court therein explained that the touchstone of Fourth Amendment analysis is the reasonableness of the particular governmental invasion of a citizen's personal security, 434 U. S., at 108–109, and that reasonableness depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by officers, *id.,* at 109. On the public interest side, the same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver, as in *Mimms,* see *id.,* at 109–110, or a passenger, as here. Indeed, the danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car. On the personal liberty side, the case for passengers is stronger than that for the driver in the sense that there is probable cause to believe that the driver has committed a minor vehicular offense, see *id.,* at 110, but there is no such reason to stop or detain passengers. But as a practical matter, passengers are already stopped by virtue of the stop of the vehicle, so that the additional intrusion upon them is minimal. Pp. 411–415.

106 Md. App. 24, 664 A. 2d 1, reversed and remanded.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 415. KENNEDY, J., filed a dissenting opinion, *post*, p. 422.

J. Joseph Curran, Jr., Attorney General of Maryland, argued the cause for petitioner. With him on the briefs were *Gary E. Bair, Mary Ellen Barbera*, and *Kathryn Grill Graeff*, Assistant Attorneys General.

Byron L. Warnken, by appointment of the Court, 519 U. S. 804 (1996), argued the cause and filed a brief for respondent.

Attorney General Reno argued the cause for the United States as *amicus curiae* urging reversal. On the brief were *Acting Solicitor General Dellinger, Acting Assistant Attorney General Keeney, Deputy Solicitor General Dreeben, David C. Frederick*, and *Nina Goodman.**

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*Briefs of *amici curiae* urging reversal were filed for the State of Ohio et al. by *Betty D. Montgomery*, Attorney General of Ohio, *Jeffrey S. Sutton*, State Solicitor, and *Simon B. Karas* and *Stuart A. Cole*, Assistant Attorneys General, joined by the Attorneys General for their respective jurisdictions as follows: *Jeff Sessions* of Alabama, *Grant Woods* of Arizona, *Winston Bryant* of Arkansas, *Daniel E. Lungren* of California, *Gale A. Norton* of Colorado, *Richard Blumenthal* of Connecticut, *M. Jane Brady* of Delaware, *Robert Butterworth* of Florida, *James E. Ryan* of Illinois, *Tom Miller* of Iowa, *Carla J. Stovall* of Kansas, *A. B. Chandler III* of Kentucky, *Richard P. Ieyoub* of Louisiana, *Scott Harshbarger* of Massachusetts, *Frank J. Kelley* of Michigan, *Hubert Humphrey III* of Minnesota, *Mike Moore* of Mississippi, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *Jeffrey R. Howard* of New Hampshire, *Tom Udall* of New Mexico, *Dennis C. Vacco* of New York, *Michael F. Easley* of North Carolina, *Heidi Heitkamp* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *Theodore Kulongoski* of Oregon, *Thomas Corbett, Jr.*, of Pennsylvania, *Jeffrey B. Pine* of Rhode Island, *Charles Condon* of South Carolina, *Mark W. Barnett* of South Dakota,

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

In this case we consider whether the rule of *Pennsylvania* v. *Mimms,* 434 U. S. 106 (1977) *(per curiam),* that a police officer may as a matter of course order the driver of a lawfully stopped car to exit his vehicle, extends to passengers as well. We hold that it does.

At about 7:30 p.m. on a June evening, Maryland state trooper David Hughes observed a passenger car driving southbound on I–95 in Baltimore County at a speed of 64 miles per hour. The posted speed limit was 55 miles per hour, and the car had no regular license tag; there was a torn piece of paper reading "Enterprise Rent-A-Car" dangling from its rear. Hughes activated his lights and sirens, signaling the car to pull over, but it continued driving for another mile and a half until it finally did so.

During the pursuit, Hughes noticed that there were three occupants in the car and that the two passengers turned to look at him several times, repeatedly ducking below sight level and then reappearing. As Hughes approached the car on foot, the driver alighted and met him halfway. The driver was trembling and appeared extremely nervous, but nonetheless produced a valid Connecticut driver's license. Hughes instructed him to return to the car and retrieve the rental documents, and he complied. During this encounter, Hughes noticed that the front-seat passenger, respondent Jerry Lee Wilson, was sweating and also appeared extremely

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Charles W. Burson of Tennessee, *Jan Graham* of Utah, *Jeffrey L. Amestoy* of Vermont, *Julio A. Brady* of the U. S. Virgin Islands, *Christine O. Gregoire* of Washington, *Darrell McGraw, Jr.,* of West Virginia, and *James E. Doyle* of Wisconsin; for Americans for Effective Law Enforcement, Inc., et al. by *Fred E. Inbau, Wayne W. Schmidt, Robert Wennerholm, James P. Manek, John Kaye, Richard M. Weintraub,* and *Bernard J. Farber;* for the National Association of Police Organizations, Inc., by *William J. Johnson;* and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Charles L. Hobson.*

nervous. While the driver was sitting in the driver's seat looking for the rental papers, Hughes ordered Wilson out of the car.

When Wilson exited the car, a quantity of crack cocaine fell to the ground. Wilson was then arrested and charged with possession of cocaine with intent to distribute. Before trial, Wilson moved to suppress the evidence, arguing that Hughes' ordering him out of the car constituted an unreasonable seizure under the Fourth Amendment. The Circuit Court for Baltimore County agreed, and granted respondent's motion to suppress. On appeal, the Court of Special Appeals of Maryland affirmed, 106 Md. App. 24, 664 A. 2d 1 (1995), ruling that *Pennsylvania* v. *Mimms* does not apply to passengers. The Court of Appeals of Maryland denied certiorari. 340 Md. 502, 667 A. 2d 342 (1995). We granted certiorari, 518 U. S. 1003 (1996), and now reverse.

In *Mimms,* we considered a traffic stop much like the one before us today. There, Mimms had been stopped for driving with an expired license plate, and the officer asked him to step out of his car. When Mimms did so, the officer noticed a bulge in his jacket that proved to be a .38-caliber revolver, whereupon Mimms was arrested for carrying a concealed deadly weapon. Mimms, like Wilson, urged the suppression of the evidence on the ground that the officer's ordering him out of the car was an unreasonable seizure, and the Pennsylvania Supreme Court, like the Court of Special Appeals of Maryland, agreed.

We reversed, explaining that "[t]he touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security,'" 434 U. S., at 108–109 (quoting *Terry* v. *Ohio,* 392 U. S. 1, 19 (1968)), and that reasonableness "depends 'on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers,'" 434 U. S., at 109 (quoting *United States* v. *Brignoni-Ponce,* 422 U. S. 873, 878 (1975)). On the public interest side of the balance, we noted that the State "freely concede[d]" that there had been nothing unusual or suspicious to justify ordering Mimms out of the car, but that it was the officer's "practice to order all drivers [stopped in traffic stops] out of their vehicles as a matter of course" as a "precautionary measure" to protect the officer's safety. 434 U. S., at 109–110. We thought it "too plain for argument" that this justification—officer safety—was "both legitimate and weighty." *Id.*, at 110. In addition, we observed that the danger to the officer of standing by the driver's door and in the path of oncoming traffic might also be "appreciable." *Id.*, at 111.

On the other side of the balance, we considered the intrusion into the driver's liberty occasioned by the officer's ordering him out of the car. Noting that the driver's car was already validly stopped for a traffic infraction, we deemed the additional intrusion of asking him to step outside his car "*de minimis.*" *Ibid.* Accordingly, we concluded that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable seizures." *Id.*, at 111, n. 6.

Respondent urges, and the lower courts agreed, that this *per se* rule does not apply to Wilson because he was a passenger, not the driver. Maryland, in turn, argues that we have already implicitly decided this question by our statement in *Michigan* v. *Long,* 463 U. S. 1032 (1983), that "[i]n [*Mimms*], we held that police may order *persons* out of an automobile during a stop for a traffic violation," *id.*, at 1047–1048 (emphasis added), and by Justice Powell's statement in *Rakas* v. *Illinois,* 439 U. S. 128 (1978), that "this Court determined in [*Mimms*] that *passengers* in automobiles have no Fourth Amendment right not to be ordered from their vehicle, once a proper stop is made," *id.*, at 155, n. 4 (Powell, J., joined by Burger, C. J., concurring) (emphasis added). We agree with respondent that the former statement was dictum, and the latter was contained in a concurrence, so that neither constitutes binding precedent.

We must therefore now decide whether the rule of *Mimms* applies to passengers as well as to drivers.[1] On the public interest side of the balance, the same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver or passenger. Regrettably, traffic stops may be dangerous encounters. In 1994 alone, there were 5,762 officer assaults and 11 officers killed during traffic pursuits and stops. Federal Bureau of Investigation, Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted 71, 33 (1994). In the case of passengers, the danger of the officer's standing in the path of oncoming traffic would not be present except in the case of a passenger in the left rear seat, but the fact that there is more than one occupant of the vehicle increases the possible sources of harm to the officer.[2]

On the personal liberty side of the balance, the case for the passengers is in one sense stronger than that for the driver. There is probable cause to believe that the driver has committed a minor vehicular offense, but there is no such reason to stop or detain the passengers. But as a practical matter, the passengers are already stopped by virtue of the stop of the vehicle. The only change in their circumstances which will result from ordering them out of the car is that they will be outside of, rather than inside of, the stopped car. Outside the car, the passengers will be denied access to any possible weapon that might be concealed in the interior of the passenger compartment. It would seem that the possibility of a violent encounter stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop. And the motivation of a passenger to employ violence to prevent apprehension of such a crime is every bit as great as that of the driver.

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[1] Respondent argues that, because we have generally eschewed bright-line rules in the Fourth Amendment context, see, *e. g.*, *Ohio* v. *Robinette*, *ante*, p. 33, we should not here conclude that passengers may constitutionally be ordered out of lawfully stopped vehicles. But, that we typically avoid *per se* rules concerning searches and seizures does not mean that we have always done so; *Mimms* itself drew a bright line, and we believe the principles that underlay that decision apply to passengers as well.

[2] JUSTICE STEVENS' dissenting opinion points out, *post*, at 416, that these statistics are not further broken down as to assaults by passengers and assaults by drivers. It is, indeed, regrettable that the empirical data on a subject such as this are sparse, but we need not ignore the data which do exist simply because further refinement would be even more helpful. JUSTICE STEVENS agrees that there is "a strong public interest in minimizing" the number of assaults on law officers, *ibid.*, and we believe that our holding today is more likely to accomplish that result than would be the case if his views were to prevail.

We think that our opinion in *Michigan* v. *Summers,* 452 U. S. 692 (1981), offers guidance by analogy here. There the police had obtained a search warrant for contraband thought to be located in a residence, but when they arrived to execute the warrant they found Summers coming down the front steps. The question in the case depended "upon a determination whether the officers had the authority to require him to re-enter the house and to remain there while they conducted their search." *Id.,* at 695. In holding as it did, the Court said:

> "Although no special danger to the police is suggested by the evidence in this record, the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence. The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." *Id.,* at 702–703 (footnote omitted).

In summary, danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car. While there is not the same basis for ordering the passengers out of the car as there is for ordering the driver out, the additional intrusion on the passenger is minimal. We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop.[3]

The judgment of the Court of Special Appeals of Maryland is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE KENNEDY joins, dissenting.

In *Pennsylvania* v. *Mimms,* 434 U. S. 106 (1977) *(per curiam),* the Court answered the "narrow question" whether an "incremental intrusion" on the liberty of a person who had been lawfully seized was reasonable. *Id.,* at 109. This case, in contrast, raises a separate and significant question concerning the power of the State to make an initial seizure of persons who are not even suspected of having violated the law.

My concern is not with the ultimate disposition of this particular case, but rather with the literally millions of other cases that will be affected by the rule the Court announces. Though the question is not before us, I am satisfied that—under the rationale of *Terry* v. *Ohio,* 392 U. S. 1 (1968)—if a police officer conducting a traffic stop has an articulable suspicion of possible danger, the officer may order passengers to exit the vehicle as a defensive tactic without running afoul of the Fourth Amendment. Accordingly, I assume that the facts recited in the majority's opinion provided a valid justification for this officer's order commanding the passengers to get out of this vehicle.[1] But the Court's ruling goes much further. It applies equally to traffic stops in which there is not even a scintilla of evidence of any potential risk to the police officer. In those cases, I firmly believe that the Fourth Amendment prohibits routine and arbitrary seizures of obviously innocent citizens.

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[3] Maryland urges us to go further and hold that an officer may forcibly detain a passenger for the entire duration of the stop. But respondent was subjected to no detention based on the stopping of the car once he had left it; his arrest was based on probable cause to believe that he was guilty of possession of cocaine with intent to distribute. The question which Maryland wishes answered, therefore, is not presented by this case, and we express no opinion upon it.

I

The majority suggests that the personal liberty interest at stake here, which is admittedly "stronger" than that at issue in *Mimms,* is outweighed by the need to ensure officer safety. *Ante,* at 413, 414–415. The Court correctly observes that "traffic stops may be dangerous encounters." *Ante,* at 413. The magnitude of the danger to police officers is reflected in the statistic that, in 1994 alone, "there were 5,762 officer assaults and 11 officers killed during traffic pursuits and stops." *Ibid.* There is, unquestionably, a strong public interest in minimizing the number of such assaults and fatalities. The Court's statistics, however, provide no support for the conclusion that its ruling will have any such effect.

Those statistics do not tell us how many of the incidents involved passengers. Assuming that many of the assaults were committed by passengers, we do not know how many occurred after the passenger got out of the vehicle, how many took place while the passenger remained in the vehicle, or indeed, whether any of them could have been prevented by an order commanding the passengers to exit.[2] There is no indication that the number of assaults was smaller in jurisdictions where officers may order passengers to exit the vehicle without any suspicion than in jurisdictions where they were then prohibited from doing so. Indeed, there is no indication that any of the assaults occurred when there was a complete absence of any articulable basis for concern about the officer's safety—the only condition under which I would hold that the Fourth Amendment prohibits an order commanding passengers to exit a vehicle. In short, the statistics are as consistent with the hypothesis that ordering passengers to get out of a vehicle increases the danger of assault as with the hypothesis that it reduces that risk.

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[1] The Maryland Court of Special Appeals held, *inter alia,* that the State had not properly preserved this claim during the suppression hearing. See App. to Pet. for Cert. 4a. The State similarly fails to press the point here. Pet. for Cert. 4, n. 1; Brief for Petitioner 4, n. 1. The issue is therefore not before us, and I am not free to concur in the Court's judgment on this alternative ground. See *Caldwell* v. *Mississippi,* 472 U. S. 320, 327 (1985); this Court's Rule 14.1(a).

Furthermore, any limited additional risk to police officers must be weighed against the unnecessary invasion that will be imposed on innocent citizens under the majority's rule in the tremendous number of routine stops that occur each day. We have long recognized that "[b]ecause of the extensive regulation of motor vehicles and traffic . . . the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office." *Cady* v. *Dombrowski*, 413 U. S. 433, 441 (1973).[3] Most traffic stops involve otherwise law-abiding citizens who have committed minor traffic offenses. A strong interest in arriving at a destination—to deliver a patient to a hospital, to witness a kickoff, or to get to work on time—will often explain a traffic violation without justifying it. In the aggregate, these stops amount to significant law enforcement activity.

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[2] I am assuming that in the typical case the officer would not order passengers out of a vehicle until after he had stopped his own car, exited, and arrived at a position where he could converse with the driver. The only way to avoid all risk to the officer, I suppose, would be to adopt a routine practice of always issuing an order through an amplified speaker commanding everyone to get out of the stopped car before the officer exposed himself to the possibility of a shot from a hidden weapon. Given the predicate for the Court's ruling—that an articulable basis for suspecting danger to the officer provides insufficient protection against the possibility of a surprise assault—we must assume that every passenger, no matter how feeble or infirm, must be prepared to accept the "petty indignity" of obeying an arbitrary and sometimes demeaning command issued over a loud speaker.

[3] See also *New York* v. *Class*, 475 U. S. 106, 113 (1986); *South Dakota* v. *Opperman*, 428 U. S. 364, 368 (1976); cf. *Whren* v. *United States*, 517 U. S. 806, 810, 818 (1996).

Indeed, the number of stops in which an officer is actually at risk is dwarfed by the far greater number of routine stops. If Maryland's share of the national total is about average, the State probably experiences about 100 officer assaults each year during traffic stops and pursuits. Making the unlikely assumption that passengers are responsible for one-fourth of the total assaults, it appears that the Court's new rule would provide a potential benefit to Maryland officers in only roughly 25 stops a year.[4] These stops represent a minuscule portion of the total. In Maryland alone, there are something on the order of one million traffic stops each year.[5] Assuming that there are passengers in about half of the cars stopped, the majority's rule is of some possible advantage to police in only about one out of every twenty thousand traffic stops in which there is a passenger in the car. And, any benefit is extremely marginal. In the overwhelming majority of cases posing a real threat, the officer would almost certainly have some ground to suspect danger that would justify ordering passengers out of the car.

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[4] This figure may in fact be smaller. The majority's data aggregate assaults committed during "[t]raffic [p]ursuits and [s]tops." Federal Bureau of Investigation, Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted 71 (1994). In those assaults that occur during the *pursuit* of a moving vehicle, it would obviously be impossible for an officer to order a passenger out of the car.

[5] Maryland had well over one million nontort motor vehicle cases during a 1-year period between 1994 and 1995. Annual Report of the Maryland Judiciary 80 (1994–1995). Though the State does not maintain a count of the number of stops performed each year, this figure is probably a fair rough proxy. The bulk of these cases likely represent a traffic stop, and this total does not include those stops in which the police officer simply gave the driver an informal reprimand. I presume that these figures are representative of present circumstances.

In contrast, the potential daily burden on thousands of innocent citizens is obvious. That burden may well be "minimal" in individual cases. *Ante,* at 415. But countless citizens who cherish individual liberty and are offended, embarrassed, and sometimes provoked by arbitrary official commands may well consider the burden to be significant.[6] In all events, the aggregation of thousands upon thousands of petty indignities has an impact on freedom that I would characterize as substantial, and which in my view clearly outweighs the evanescent safety concerns pressed by the majority.

II

The Court concludes today that the balance of convenience and danger that supported its holding in *Mimms* applies to passengers of lawfully stopped cars as well as drivers. In *Mimms* itself, however, the Court emphasized the fact that the intrusion into the driver's liberty at stake was "occasioned not by the initial stop of the vehicle, which was admittedly justified, but by the order to get out of the car." 434 U. S., at 111. The conclusion that "this additional intrusion can only be described as *de minimis*" rested on the premise that the "police have already lawfully decided that the driver shall be briefly detained." *Ibid.*[7]

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[6] The number of cases in which the command actually protects the officer from harm may well be a good deal smaller than the number in which a passenger is harmed by exposure to inclement weather, as well as the number in which an ill-advised command is improperly enforced. Consider, for example, the harm caused to a passenger by an inadequately trained officer after a command was issued to exit the vehicle in *Board of Comm'rs of Bryan Cty.* v. *Brown,* 67 F. 3d 1174 (CA5 1995), cert. granted, 517 U. S. 1154 (1996).

[7] Dissenting in *Mimms,* I criticized the Court's reasoning and, indeed, predicted the result that the majority reaches today. 434 U. S., at 122–123.

In this case as well, the intrusion on the passengers' liberty occasioned by the initial stop of the vehicle is not challenged. That intrusion was a necessary by-product of the lawful detention of the driver. But the passengers had not yet been seized at the time the car was pulled over, any more than a traffic jam caused by construction or other state-imposed delay not directed at a particular individual constitutes a seizure of that person. The question is whether a passenger in a lawfully stopped car may be seized, by an order to get out of the vehicle, without any evidence whatsoever that he or she poses a threat to the officer or has committed an offense.[8]

To order passengers about during the course of a traffic stop, insisting that they exit and remain outside the car, can hardly be classified as a *de minimis* intrusion. The traffic violation sufficiently justifies subjecting the driver to detention and some police control for the time necessary to conclude the business of the stop. The restraint on the liberty of blameless passengers that the majority permits is, in contrast, entirely arbitrary.[9]

In my view, wholly innocent passengers in a taxi, bus, or private car have a constitutionally protected right to decide whether to remain comfortably seated within the vehicle rather than exposing themselves to the elements and the observation of curious bystanders. The Constitution should not be read to permit law enforcement officers to order innocent passengers about simply because they have the misfortune to be seated in a car whose driver has committed a minor traffic offense.

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[8] The order to the passenger is unquestionably a "seizure" within the meaning of the Fourth Amendment. As we held in *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 878 (1975): "The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest. *Davis* v. *Mississippi*, 394 U. S. 721 (1969); *Terry* v. *Ohio*, 392 U. S. 1, 16–19 (1968)."

[9] Cf. *Ybarra* v. *Illinois*, 444 U. S. 85, 91 (1979) ("'[A] person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person'" (citing *Sibron* v. *New York*, 392 U. S. 40, 62–63 (1968))).

Unfortunately, the effect of the Court's new rule on the law may turn out to be far more significant than its immediate impact on individual liberty. Throughout most of our history the Fourth Amendment embodied a general rule requiring that official searches and seizures be authorized by a warrant, issued "upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."[10] During the prohibition era, the exceptions for warrantless searches supported by probable cause started to replace the general rule.[11] In 1968, in the landmark "stop and frisk" case *Terry* v. *Ohio*, 392 U. S. 1 (1968), the Court placed its stamp of approval on seizures supported by specific and articulable facts that did not establish probable cause. The Court crafted *Terry* as a narrow exception to the general rule that "the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure." *Id.*, at 20. The intended scope of the Court's major departure from prior practice was reflected in its statement that the "demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence." *Id.*, at 21, n. 18; see also *id.*, at 27. In the 1970's, the Court twice rejected attempts to justify suspicionless seizures that caused only "modest" intrusions on the liberty of passengers in automobiles. *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 879–880 (1975); *Delaware* v. *Prouse*, 440 U. S. 648, 662–663

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[10] See, *e. g., Amos* v. *United States*, 255 U. S. 313, 315 (1921); *Weeks* v. *United States*, 232 U. S. 383, 393 (1914).

[11] See, *e. g., Carroll* v. *United States*, 267 U. S. 132, 149 (1925) (automobile search). We had also recognized earlier in dictum the now well-established doctrine permitting warrantless searches incident to a valid arrest. See *Weeks*, 232 U. S., at 392; see also J. Landynski, Search and Seizure and the Supreme Court 87 (1966).

(1979).[12] Today, however, the Court takes the unprecedented step of authorizing seizures that are unsupported by any individualized suspicion whatsoever.

The Court's conclusion seems to rest on the assumption that the constitutional protection against "unreasonable" seizures requires nothing more than a hypothetically rational basis for intrusions on individual liberty. How far this ground-breaking decision will take us, I do not venture to predict. I fear, however, that it may pose a more serious threat to individual liberty than the Court realizes.

I respectfully dissent.

JUSTICE KENNEDY, dissenting.

I join in the dissent by JUSTICE STEVENS and add these few observations.

The distinguishing feature of our criminal justice system is its insistence on principled, accountable decisionmaking in individual cases. If a person is to be seized, a satisfactory explanation for the invasive action ought to be established by an officer who exercises reasoned judgment under all the circumstances of the case. This principle can be accommodated even where officers must make immediate decisions to ensure their own safety.

Traffic stops, even for minor violations, can take upwards of 30 minutes. When an officer commands passengers innocent of any violation to leave the vehicle and stand by the side of the road in full view of the public, the seizure is serious, not trivial. As JUSTICE STEVENS concludes, the command to exit ought not to be given unless there are objective circumstances making it reasonable for the officer to issue the order. (We do not have before us the separate question whether passengers, who, after all, are in the car by choice, can be ordered to remain there for a reasonable time while the police conduct their business.)

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[12] Dissenting in *Delaware* v. *Prouse*, 440 U. S. 648 (1979), then-JUSTICE REHNQUIST characterized the motorist's interest in freedom from random stops as "only the most diaphanous of citizen interests." *Id.*, at 666.

The requisite showing for commanding passengers to exit need be no more than the existence of any circumstance justifying the order in the interests of the officer's safety or to facilitate a lawful search or investigation. As we have acknowledged for decades, special latitude is given to the police in effecting searches and seizures involving vehicles and their occupants. See, *e. g.*, *Chambers* v. *Maroney*, 399 U. S. 42 (1970); *New York* v. *Class*, 475 U. S. 106 (1986); *New York* v. *Belton*, 453 U. S. 454 (1981). Just last Term we adhered to a rule permitting vehicle stops if there is some objective indication that a violation has been committed, regardless of the officer's real motives. See *Whren* v. *United States*, 517 U. S. 806 (1996). We could discern no other, workable rule. Even so, we insisted on a reasoned explanation for the stop.

The practical effect of our holding in *Whren*, of course, is to allow the police to stop vehicles in almost countless circumstances. When *Whren* is coupled with today's holding, the Court puts tens of millions of passengers at risk of arbitrary control by the police. If the command to exit were to become commonplace, the Constitution would be diminished in a most public way. As the standards suggested in dissent are adequate to protect the safety of the police, we ought not to suffer so great a loss.

Since a myriad of circumstances will give a cautious officer reasonable grounds for commanding passengers to leave the vehicle, it might be thought the rule the Court adopts today will be little different in its operation than the rule offered in dissent. It does no disservice to police officers, however, to insist upon exercise of reasoned judgment. Adherence to neutral principles is the very premise of the rule of law the police themselves defend with such courage and dedication.

Most officers, it might be said, will exercise their new power with discretion and restraint; and no doubt this often will be the case. It might also be said that if some jurisdictions use today's ruling to require passengers to exit as a matter of routine in every stop, citizen complaints and political intervention will call for an end to the practice. These arguments, however, would miss the point. Liberty comes not from officials by grace but from the Constitution by right.

For these reasons, and with all respect for the opinion of the Court, I dissent.

REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. *v.* DOE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 95–1694. Argued December 2, 1996—Decided February 19, 1997

Respondent Doe, a New York citizen, sued the Regents of the University of California and others, alleging, *inter alia,* that the University had agreed to employ him at a laboratory it operates pursuant to a contract with the federal Department of Energy, and that it had wrongfully breached its agreement with him upon determining that he could not obtain a required security clearance. Relying on Circuit precedent holding that the University is "an arm of the state," the District Court concluded that the Eleventh Amendment barred Doe from maintaining his breach-of-contract action in federal court. In reversing, the Ninth Circuit held that liability for money judgments is the single most important factor in determining whether an entity is an arm of the State, and gave decisive weight to the terms of the University's agreement with the Energy Department, under which the Department, not the State, is liable for any judgment rendered against the University in its performance of the contract.

Held: The fact that the Federal Government has agreed to indemnify a state instrumentality against litigation costs, including adverse judgments, does not divest the state agency of Eleventh Amendment immunity. Nothing in this Court's opinions supports the notion that the presence or absence of a third party's undertaking to indemnify a state agency should determine whether it is the kind of entity that should be treated as an arm of the State. Just as with the arm-of-the-state inquiry, see, *e. g., Hess* v. *Port Authority Trans-Hudson Corporation,* 513 U. S. 30, 51–52, it is the entity's potential legal liability for judgments, rather than its ability or inability to require a third party to reimburse it, or to discharge the liability in the first instance, that is relevant in determining the underlying Eleventh Amendment question. Accordingly, the Court rejects Doe's principal contention—that the Amendment does not apply to this litigation because any damages award would be paid by the Energy Department, and therefore have no impact upon California's treasury. Because the question on which certiorari was granted does not encompass Doe's alternative argument attacking the Ninth Circuit cases holding the University to be an arm of the State, the Court declines to address that argument. Pp. 429–432.

65 F. 3d 771, reversed.

STEVENS, J., delivered the opinion for a unanimous Court.

Charles A. Miller argued the cause for petitioners. With him on the briefs were *Robert A. Long, Jr., John F. Duffy, James E. Holst,* and *Patrick J. O'Hern.*

Lisa Schiavo Blatt argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Acting Solicitor General Dellinger, Assistant Attorney General Hunger, Deputy Solicitor General Bender,* and *Mark B. Stern.*

Richard Gayer, by appointment of the Court, 519 U. S. 804, argued the cause for respondent. With him on the brief was *Madeleine Tress.*[*]

JUSTICE STEVENS delivered the opinion of the Court.

The narrow question presented by this case is whether the fact that the Federal Government has agreed to indemnify a state instrumentality against the costs of litigation, including adverse judgments, divests the state agency of Eleventh Amendment immunity. We hold that it does not.

I

Respondent, a citizen of New York, brought suit against the Regents of the University of California and several individual defendants in the United States District Court for the Northern District of California. Although he alleged other claims, we are concerned only with respondent's breach-of-contract claim against the University. Doe contends that the University agreed to employ him as a mathematical physicist at the Lawrence Livermore National Laboratory, which the University operates pursuant to a contract with the Federal Government. According to his complaint, the

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[*] *Richard Ruda* and *James I. Crowley* filed a brief for the National Conference of State Legislatures et al. as *amici curiae* urging reversal.

James K. T. Hunter, pro se, filed a brief as *amicus curiae* urging affirmance.

University wrongfully refused to perform its agreement with Doe because it determined that he could not obtain the required security clearance from the Department of Energy (Department). Relying on Ninth Circuit cases holding that the University is "an arm of the state,"[1] the District Court concluded that the Eleventh Amendment barred respondent from maintaining his breach-of-contract action in federal court.

The Court of Appeals for the Ninth Circuit reversed. Assuming that in some, but not all, of its functions the University is entitled to Eleventh Amendment immunity,[2] the court addressed the narrow question whether it is an arm of the State when "acting in a managerial capacity" for the Livermore Laboratory. *Doe* v. *Lawrence Livermore National Laboratory,* 65 F. 3d 771, 774 (1995). Although the majority applied "a five-factor analysis,"[3] it emphasized that "liability for money judgment is the single most important factor in determining whether an entity is an arm of the state." *Ibid.* The majority opinion gave decisive weight to the terms of the University's agreement with the Department, which made it "clear that the Department, and not the State of California, is liable for any judgment rendered against the University in its performance of the Contract." *Ibid.*

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[1] See App. to Pet. for Cert. A–22, A–24, and A–28 (citing *Thompson* v. *City of Los Angeles,* 885 F. 2d 1439, 1442–1443 (1989), and *Jackson* v. *Hayakawa,* 682 F. 2d 1344, 1350 (1982)).

[2] The court relied on one case holding that Congress had abrogated the University's immunity from suit for patent infringement, *Genentech, Inc.* v. *Eli Lilly & Co.,* 998 F. 2d 931, 940–941 (CA Fed. 1993), cert. denied, 510 U. S. 1140 (1994), and another holding that the University had waived its immunity in some cases, *In re Holoholo,* 512 F. Supp. 889, 901–902 (Haw. 1981), for its conclusion that the "University is an enormous entity which functions in various capacities and which is not entitled to Eleventh Amendment immunity for all of its functions." *Doe* v. *Lawrence Livermore National Laboratory,* 65 F. 3d 771, 775 (1995). We have no occasion to consider questions of waiver or abrogation of immunity in this case. Nor is it necessary to decide whether there may be some state instrumentalities that qualify as "arms of the State" for some purposes but not others.

[3] The five factors considered by the court in evaluating whether the University is an arm of the State were: "[1] whether a money judgment would be satisfied out of state funds, [2] whether the entity performs central governmental functions, [3] whether the entity may sue or be sued, [4] whether the entity has power to take property in its own name or only the name of the state, and [5] the corporate status of the entity." *Id.,* at 774.

The dissenting judge did not take issue with the majority's emphasis on the importance of the defendant's liability for a money judgment, but he reasoned that the proper analysis should focus on the primary legal liability rather than the ultimate economic impact of the judgment. Noting that it was undisputed that a judgment against the University "is a legal obligation of the State of California," *id.*, at 777, he discounted the significance of the indemnitor's secondary, or indirect, liability. For his conclusion, he relied on Ninth Circuit precedent suggesting that a State may not confer Eleventh Amendment immunity on an entity or individual who would otherwise not enjoy that immunity simply by volunteering to satisfy judgments against the entity, *Durning* v. *Citibank, N. A.*, 950 F. 2d 1419, 1425, n. 3 (1991), or by passing a statute indemnifying individual officers from liability, *Blaylock* v. *Schwinden*, 862 F. 2d 1352, 1353–1354 (1988). "The question is not who pays in the end; it is who is legally obligated to pay the judgment that is being sought." 65 F. 3d, at 777–778.

Because other Courts of Appeals agree with the dissent's focus on legal rather than financial liability,[4] we granted certiorari to resolve the conflict. 518 U. S. 1004 (1996).

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[4] See *Cronen* v. *Texas Dept. of Human Services*, 977 F. 2d 934, 938 (CA5 1992) ("[T]he source of the damages is irrelevant when the suit is against the state itself or a state agency"); *Cannon* v. *University of Health Sciences/The Chicago Medical School*, 710 F. 2d 351, 357 (CA7 1983) ("No authority supports Cannon's argument that [the Eleventh Amendment] analysis is altered by the possibility that a damage award would be met through insurance proceeds or from federal funds").

II

The Eleventh Amendment provides:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

It has long been settled that the reference to actions "against one of the United States" encompasses not only actions in which a State is actually named as the defendant, but also certain actions against state agents and state instrumentalities. *Poindexter* v. *Greenhow*, 114 U. S. 270, 287 (1885); *In re Ayers*, 123 U. S. 443, 487 (1887); *Smith* v. *Reeves*, 178 U. S. 436, 438–439 (1900); *Ford Motor Co.* v. *Department of Treasury of Ind.*, 323 U. S. 459 (1945). Thus, "when the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants." *Id.*, at 464.

When deciding whether a state instrumentality may invoke the State's immunity, our cases have inquired into the relationship between the State and the entity in question. In making this inquiry, we have sometimes examined "the essential nature and effect of the proceeding," *ibid.;* see also *Kennecott Copper Corp.* v. *State Tax Comm'n*, 327 U. S. 573, 576 (1946), and sometimes focused on the "nature of the entity created by state law"[5] to determine whether it should

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[5] Ultimately, of course, the question whether a particular state agency has the same kind of independent status as a county or is instead an arm of the State, and therefore "one of the United States" within the meaning of the Eleventh Amendment, is a question of federal law. But that federal question can be answered only after considering the provisions of state law that define the agency's character.

"be treated as an arm of the State," *Mt. Healthy City Bd. of Ed.* v. *Doyle,* 429 U. S. 274, 280 (1977).[6]

Of course, the question whether a money judgment against a state instrumentality or official would be enforceable against the State is of considerable importance to any evaluation of the relationship between the State and the entity or individual being sued. *Hess* v. *Port Authority Trans-Hudson Corporation,* 513 U. S. 30, 45–51 (1994); *Edelman* v. *Jordan,* 415 U. S. 651, 663 (1974); *Ford Motor,* 323 U. S., at 464. In *Hess,* we evaluated the relationship between an entity created by a bistate compact and the States that had joined to create that entity in order to determine whether that entity could properly be denominated as an "arm" of either of its founding States for the purposes of the Eleventh Amendment. In addition to considering the position of the bistate entity as a unique creature within the federal system, 513 U. S., at 39–42, and the nature of the claims at issue in the underlying proceeding, *id.,* at 42, we focused particular attention on the fact that "both legally and practically" neither of the relevant States would have been obligated to pay a judgment obtained against the bistate entity, *id.,* at 51–52.

Respondent seeks to detach the importance of a State's legal liability for judgments against a state agency from its moorings as an indicator of the relationship between the State and its creation and to convert the inquiry into a formalistic question of ultimate financial liability. But none of the reasoning in our opinions lends support to the notion that the presence or absence of a third party's undertaking to indemnify the agency should determine whether it is the kind of entity that should be treated as an arm of the State.

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[6] We relied in *Mt. Healthy* on our earlier decision that a California county is not an "arm of the State" and therefore may be considered a "citizen" of California for the purpose of determining the federal court's diversity jurisdiction over a state-law claim. *Moor* v. *County of Alameda,* 411 U. S. 693, 717–721 (1973). In *Moor* we made a "detailed examination of the relevant provisions of California law" defining counties, noting that the county "is liable for all judgments against it and is authorized to levy taxes to pay such judgments," that it is "empowered to issue general obligation bonds," and that it has other characteristics that provide "persuasive indicia of the independent status occupied by California counties relative to the State of California." *Id.,* at 719–721.

Just as with the arm-of-the-state inquiry, we agree with the dissenting judge in the Court of Appeals that with respect to the underlying Eleventh Amendment question, it is the entity's potential legal liability, rather than its ability or inability to require a third party to reimburse it, or to discharge the liability in the first instance, that is relevant. Surely, if the sovereign State of California should buy insurance to protect itself against potential tort liability to pedestrians stumbling on the steps of the State Capitol, it would not cease to be "one of the United States."

Accordingly, we reject respondent's principal contention—that the Eleventh Amendment does not apply to this litigation because any award of damages would be paid by the Department of Energy, and therefore have no impact upon the treasury of the State of California. The Eleventh Amendment protects the State from the risk of adverse judgments even though the State may be indemnified by a third party.

III

As an alternative ground for affirmance, respondent invites us to reexamine the validity of the Ninth Circuit cases holding that the University is an arm of the State. He argues that we should look beyond the potential impact of an adverse judgment on the state treasury, and examine the extent to which the elected state government exercises "real, immediate control and oversight" over the University, see *id.*, at 62 (O'CONNOR, J., dissenting), as well as the character of the function that gave rise to the litigation. Because the question we granted certiorari to address does not encompass this argument, we decline to address it.

The judgment of the Court of Appeals is reversed.

It is so ordered.

LYNCE *v.* MATHIS, SUPERINTENDENT, TOMOKA CORRECTIONAL INSTITUTION, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 95–7452. Argued November 4, 1996—Decided February 19, 1997

Beginning in 1983 the Florida Legislature enacted a series of statutes authorizing the award of early release credits to prison inmates when the state prison population exceeded predetermined levels. In 1986 petitioner received a 22-year prison sentence on a charge of attempted murder. In 1992 he was released based on the determination that he had accumulated five different types of early release credits totaling 5,668 days, including 1,860 days of "provisional credits" awarded as a result of prison overcrowding. Shortly thereafter, the state attorney general issued an opinion interpreting a 1992 statute as having retroactively canceled all provisional credits awarded to inmates convicted of murder and attempted murder. Petitioner was therefore rearrested and returned to custody. He filed a habeas corpus petition alleging that the retroactive cancellation of provisional credits violated the *Ex Post Facto* Clause. Relying on precedent rejecting this argument on the ground that the sole purpose of these credits was to alleviate prison overcrowding, the District Court dismissed the petition. The Court of Appeals denied a certificate of probable cause.

Held: The 1992 statute canceling provisional release credits violates the *Ex Post Facto* Clause. Pp. 439–449.

(a) This Court rejects respondents' contention that the cancellation of petitioner's provisional credits did not violate the Clause because the credits had been issued as part of administrative procedures designed to alleviate prison overcrowding and were therefore not an integral part of petitioner's punishment. To fall within the *ex post facto* prohibition, a law must be retrospective and "disadvantage the offender affected by it," *Weaver* v. *Graham,* 450 U. S. 24, 29, by, *inter alia,* increasing the punishment for the crime, see *Collins* v. *Youngblood,* 497 U. S. 37, 50. The operation of the 1992 statute was clearly retrospective, and a determination that it disadvantaged petitioner by increasing his punishment is supported by *Weaver* v. *Graham,* 450 U. S., at 36, in which the Court held that retroactively decreasing the amount of gain-time awarded for an inmate's good behavior violated the *Ex Post Facto* Clause. Because *Weaver* and subsequent cases focused on whether the legislature's action lengthened the prisoner's sentence without examining the subjective purposes behind the sentencing scheme, see, *e. g., id.*, at 33, the fact that the generous gain-time provisions in Florida's 1983 statute were motivated more by the interest in avoiding overcrowding than by a desire to reward good behavior is not relevant to the essential *ex post facto* inquiry. *California Dept. of Corrections* v. *Morales,* 514 U. S. 499, 507, distinguished. Respondents are foreclosed by *Weaver,* 450 U. S., at 32, to the extent they argue that overcrowding gain-time is not in some technical sense part of the sentence. Their further argument that petitioner could not reasonably have expected to receive any overcrowding credits when he entered his plea of *nolo contendere* is singularly unpersuasive, given the facts that he was actually awarded 1,860 days and that those credits were retroactively canceled as a result of the 1992 statute. Pp. 439–447.

(b) The Court disagrees with respondents' argument that petitioner is not entitled to relief because his provisional overcrowding credits were awarded pursuant to statutes enacted after the date of his offense rather than pursuant to the 1983 statute. Although the overcrowding statute in effect at the time of his crime was slightly modified in subsequent years, its basic elements remained the same, and the changes do not affect his core *ex post facto* claim. However, the differences in the statutes may have affected the precise amount of release time he received. Because this point was not adequately developed earlier in the proceeding, and because it may not in any event affect petitioner's entitlement to release, the Court leaves it open for further consideration on remand. Pp. 447–449.

Reversed and remanded.

STEVENS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed an opinion concurring in part and concurring in the judgment, in which SCALIA, J., joined, *post,* p. 449.

Joel T. Remland argued the cause for petitioner. With him on the briefs was *Carter G. Phillips.*

Parker D. Thomson, Assistant Attorney General of Florida, argued the cause for respondents. On the brief for respondent Butterworth were *Mr. Butterworth,* Attorney

General, *pro se,* and *Jason Vail,* Assistant Attorney General. *Susan A. Maher* filed a brief for respondent Mathis.*

JUSTICE STEVENS delivered the opinion of the Court.

In 1983 and thereafter the Florida Legislature enacted a series of statutes authorizing the department of corrections to award early release credits to prison inmates when the population of the state prison system exceeded predetermined levels. The question presented by this case is whether a 1992 statute canceling such credits for certain classes of offenders after they had been awarded—indeed, after they had resulted in the prisoners' release from custody—violates the *Ex Post Facto* Clause of the Federal Constitution.

I

In 1986 petitioner pleaded *nolo contendere* to a charge of attempted murder and received a sentence of 22 years (8,030 days) in prison. In 1992 the Florida Department of Corrections released him from prison based on its determination that he had accumulated five different types of early release credits totaling 5,668 days.[1] Of that total, 1,860 days were

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**Chet Kaufman* filed a brief for the Florida Public Defender Association, Inc., as *amicus curiae* urging reversal.

A brief of *amici curiae* urging affirmance was filed for the State of Nevada et al. by *Frankie Sue Del Papa,* Attorney General of Nevada, and *Anne B. Cathcart,* Senior Deputy Attorney General, and by the Attorneys General for their respective States as follows: *Daniel E. Lungren* of California, *Michael J. Bowers* of Georgia, *Alan G. Lance* of Idaho, *Carla J. Stovall* of Kansas, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Betty D. Montgomery* of Ohio, *W. A. Drew Edmondson* of Oklahoma, *Jeffrey B. Pine* of Rhode Island, *Charles Molony Condon* of South Carolina, *Jeffrey L. Amestoy* of Vermont, and *James S. Gilmore III* of Virginia.

Lisa B. Kemler and *Baya Harrison III* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae.*

[1] The total included: (1) a 170-day credit for time spent in jail prior to his conviction; (2) "basic gain-time" of 2,640 days; (3) "additional [incentive]

"provisional credits" awarded as a result of prison overcrowding. Shortly after petitioner's release, the state attorney general issued an opinion interpreting a 1992 statute as having retroactively canceled all provisional credits awarded to inmates convicted of murder or attempted murder. Petitioner was therefore rearrested and returned to custody. His new release date was set for May 19, 1998.

In 1994 petitioner filed a petition for a writ of habeas corpus alleging that the retroactive cancellation of provisional credits violated the *Ex Post Facto* Clause. Relying on Eleventh Circuit[2] and Florida[3] precedent holding that the revocation of provisional credits did not violate the *Ex Post Facto* Clause because their sole purpose was to alleviate prison overcrowding, the Magistrate Judge recommended dismissal of the petition. The District Court adopted that recommendation, dismissed the petition, and denied a certificate of probable cause. The Court of Appeals for the Eleventh Circuit also denied a certificate of probable cause in an unpublished order. Because the Court of Appeals for the Tenth Circuit reached a different conclusion on similar facts, *Arnold* v. *Cody*, 951 F. 2d 280 (1991), we granted certiorari to resolve the conflict. 517 U. S. 1186 (1996).[4]

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gain-time" of 958 days; (4) "administrative gain-time" of 335 days; and (5) "provisional credits" of 1,860 days. Disciplinary action resulted in a forfeiture of 295 days.

[2] *Hock* v. *Singletary*, 41 F. 3d 1470 (1995).

[3] *Dugger* v. *Rodrick*, 584 So. 2d 2 (Fla. 1991), cert. denied *sub nom. Rodrick* v. *Singletary*, 502 U. S. 1037 (1992).

[4] Petitioner did not advance his *ex post facto* claim in state court. In the District Court respondents challenged his failure to exhaust his state remedies, but do not appear to have raised the exhaustion issue in the Court of Appeals; nor have they raised it in this Court. Presumably they are satisfied, as we are, that exhaustion would have been futile. The Florida Supreme Court, in *Dugger* v. *Rodrick*, 584 So. 2d 2 (1991), held that retrospective application of the provisional credits statute's offense-based exclusion did not violate the *Ex Post Facto* Clause. The court reasoned that overcrowding credits, unlike basic gain-time or incentive gain-time, were merely "procedural" and did not create any substantive

II

Motivated largely by the overcrowded condition of the entire Florida prison system,[5] in 1983 the state legislature enacted the Correctional Reform Act of 1983, a comprehensive revision of the State's sentencing laws.[6] The Act authorized generous awards of early release credits including "basic gain-time" at the rate of 10 days for each month, "up to 20 days of incentive gain time, which shall be credited and applied monthly," and additional deductions of "meritorious gain-time of from 1 to 60 days." See 1983 Fla. Laws, ch. 83–131, § 8.[7] The Act also created an emergency procedure to be followed "whenever the population of the state correctional system exceeds 98 percent of the lawful capacity of the system for males or females, or both." § 5(1).[8] When

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rights. Relying on *Dugger*, the Florida Supreme Court held in *Griffin* v. *Singletary*, 638 So. 2d 500 (1994), that cancellation of provisional credits actually awarded to a prisoner did not violate the *Ex Post Facto* Clause. Respondents have not suggested any reason why the Florida courts would have decided petitioner's case differently.

[5] In 1980 the Florida Department of Corrections consented to the entry of a decree establishing a limit on the prison population that could not be exceeded without court approval. See *Costello* v. *Wainwright*, 489 F. Supp. 1100 (MD Fla. 1980). In 1982 a special session of the legislature created a Corrections Overcrowding Task Force, which drafted the 1983 legislation.

[6] 1983 Fla. Laws, ch. 83–131.

[7] Section 8 amended § 944.275 of the Florida Statutes.

[8] Section 5, in pertinent part, provides:

"(1) The Department of Corrections shall advise the Governor of the existence of a state of emergency in the state correctional system whenever the population of the state correctional system exceeds 98 percent of the lawful capacity of the system for males or females, or both. In conveying this information, the secretary of the department shall certify the rated design capacity, maximum capacity, lawful capacity, system maximum capacity, and current population of the state correctional system. When the Governor verifies such certification by letter, the secretary shall declare a state of emergency.

"(2) Following the declaration of a state of emergency, the sentences of all inmates in the system who are eligible to earn gain-time shall be re-such an emergency was declared, "the sentences of all inmates in the system who are eligible to earn gain-time shall be reduced by the credit of up to 30 days gain-time in 5-day increments as may be necessary to reduce the inmate population to 97 percent of lawful capacity." § 5(2).

In the ensuing years, the Florida Legislature modified the overcrowding gain-time system. In 1987 the legislature raised the threshold for awarding emergency release credits from 98% to 99% of capacity. At the same time, the legislature authorized a new form of overcrowding credit, administrative gain-time, with a 98% threshold, which authorized up to a maximum of 60 days additional gain-time to inmates already earning incentive gain-time. Inmates serving sentences for certain offenses were ineligible for the awards. In 1988 the legislature repealed the administrative gain-time provision, and replaced it with a provisional credits system.[9] The language of the provisional credits statute was virtually identical to that of the administrative gain-time statute—it also authorized up to 60 days of gain-time but was triggered when the inmate population reached 97.5% of capacity. In addition, the legislature expanded the list of offenders who were ineligible for the awards.

Having received overcrowding gain-time under the administrative gain-time and provisional credits statutes, as well as basic and incentive gain-time, petitioner was released from prison in 1992. That same year, the legislature canceled provisional overcrowding credits for certain classes of

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duced by the credit of up to 30 days gain-time in 5-day increments as may be necessary to reduce the inmate population to 97 percent of lawful capacity." 1983 Fla. Laws, ch. 83–131, § 5.

[9] 1988 Fla. Laws, ch. 88–122, § 5. The provisional credits statute was repealed in 1993. 1993 Fla. Laws, ch. 93–406, §§ 32, 35. The only overcrowding credit system in place today in Florida is the "control release" provision, first enacted in 1989, which authorizes release from incarceration rather than gain-time to control prison population. See Fla. Stat. § 947.146 (Supp. 1992).

inmates, including those convicted of attempted murder.[10] As a result of that action, credits for 2,789 inmates who were still in custody were canceled, and rearrest warrants were issued for 164 offenders who had been released.[11] Petitioner was in the latter class.

Respondents contend that the cancellation of petitioner's provisional credits did not violate the *Ex Post Facto* Clause for two reasons: (1) Because the credits had been issued as part of administrative procedures designed to alleviate overcrowding, they were not an integral part of petitioner's punishment; and (2) in petitioner's case, the specific overcrowding credits had been awarded pursuant to statutes enacted after the date of his offense rather than pursuant to the 1983 statute. We consider the arguments separately.

III

The presumption against the retroactive application of new laws is an essential thread in the mantle of protection that the law affords the individual citizen. That presumption "is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." *Landgraf* v. *USI Film Products,* 511 U. S. 244, 265 (1994). This doctrine finds expression in several provisions of our Constitution.[12] The specific prohibition on *ex post facto* laws is only one aspect of the broader constitutional protection against arbitrary changes in the law. In both the civil and the criminal context, the Constitution places limits on the sovereign's ability to use its lawmaking power to modify bargains it has made with its subjects. The basic principle is one that protects not only the rich and the powerful, *United States* v. *Winstar Corp.*, 518 U. S. 839 (1996), but also the indigent defendant engaged in negotiations that may lead to an acknowledgment of guilt and a suitable punishment.

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[10] See Fla. Op. Atty. Gen. 92–96 (1992), reprinted in Lodging, p. 53; *Griffin* v. *Singletary,* 638 So. 2d, at 501. In 1989 the Florida Legislature amended the provisional credits statute to render those convicted of certain murder offenses, including attempted murder, ineligible for provisional credits. Fla. Stat. § 944.277 (1989). The Florida Department of Corrections interpreted the 1989 amendments, and subsequent amendments enacted in 1990 and 1991 which contained the same exclusion, to apply prospectively. The 1992 amendment at issue in this case was originally interpreted by the department of corrections to apply only prospectively, but the subsequent 1992 opinion by the attorney general concluded that the statute applied retroactively.

[11] Department of Corrections Letter of July 9, 1996, App. to Brief for Florida Public Defender Association, Inc., as *Amicus Curiae.* The petitioner's administrative gain-time credits were also canceled, but he does not challenge that action.

Article I, § 10, of the Federal Constitution provides that "[n]o State shall . . . pass any . . . ex post facto Law." In his opinion for the Court in *Beazell* v. *Ohio*, 269 U. S. 167 (1925), Justice Stone explained:

> "The constitutional prohibition and the judicial interpretation of it rest upon the notion that laws, whatever their form, which purport to make innocent acts criminal after the event, or to aggravate an offense, are harsh and oppressive, and that the criminal quality attributable to an act, either by the legal definition of the offense or by the nature or amount of the punishment imposed for its commission, should not be altered by legislative enactment, after the fact, to the disadvantage of the accused." *Id.*, at 170.

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[12] "The *Ex Post Facto* Clause flatly prohibits retroactive application of penal legislation. Article I, § 10, cl. 1, prohibits States from passing another type of retroactive legislation, laws 'impairing the Obligation of Contracts.' The Fifth Amendment's Takings Clause prevents the Legislature (and other government actors) from depriving private persons of vested property rights except for a 'public use' and upon payment of 'just compensation.' The prohibitions on 'Bills of Attainder' in Art. I, §§ 9–10, prohibit legislatures from singling out disfavored persons and meting out summary punishment for past conduct. See, *e. g.*, *United States* v. *Brown*, 381 U. S. 437, 456–462 (1965). The Due Process Clause also protects the interests in fair notice and repose that may be compromised by retroactive legislation . . . ." *Landgraf* v. *USI Film Products*, 511 U. S., at 266 (footnote omitted).

The bulk of our *ex post facto* jurisprudence has involved claims that a law has inflicted "a greater punishment, than the law annexed to the crime, when committed." *Calder* v. *Bull*, 3 Dall. 386, 390 (1798) (emphasis deleted).[13] We have explained that such laws implicate the central concerns of the *Ex Post Facto* Clause: "the lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was consummated." *Weaver* v. *Graham*, 450 U. S. 24, 30 (1981).

To fall within the *ex post facto* prohibition, a law must be retrospective—that is, "it must apply to events occurring before its enactment"—and it "must disadvantage the offender affected by it," *id.*, at 29, by altering the definition of criminal conduct or increasing the punishment for the crime, see *Collins* v. *Youngblood*, 497 U. S. 37, 50 (1990). In this case the operation of the 1992 statute to effect the cancellation of overcrowding credits and the consequent reincarceration of petitioner was clearly retrospective. The narrow issue that we must decide is thus whether those consequences disadvantaged petitioner by increasing his punishment.

In arguing that the cancellation of overcrowding credits inflicts greater punishment, petitioner relies primarily on our decision in *Weaver* v. *Graham*, in which we considered whether retroactively decreasing the amount of gain-time awarded for an inmate's good behavior violated the *Ex Post Facto* Clause. In that case the petitioner had pleaded guilty to second-degree murder and had been sentenced to prison for 15 years. At the time of Weaver's plea, Florida law provided credits contingent on the good conduct of the prisoner of 5 days per month for the first two years of his sentence, 10 days per month for the third and fourth years, and 15 days per month thereafter. The law therefore provided him with an opportunity to be released after serving less than nine years of his sentence. In 1978 the Florida Legislature enacted a new formula for computing gain-time; instead of 5, 10, and 15 days per month, it authorized only 3, 6, and 9 days. The new statute did not withdraw any credits already awarded to Weaver, but by curtailing the availability of future credits it effectively postponed the date when he would become eligible for early release. Because the statute made the punishment for crimes committed before its enactment "more onerous," we unanimously concluded that it ran "afoul of the prohibition against *ex post facto* laws." 450 U. S., at 36.

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[13] This case falls in the third of the four categories of *ex post facto* laws described by Justice Chase: "1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender." *Calder* v. *Bull*, 3 Dall., at 390 (emphasis deleted).

According to petitioner, although this case involves overcrowding credits, it is essentially like *Weaver* because the issuance of these credits was dependent on an inmate's good conduct. Respondents, on the other hand, submit that *Weaver* is not controlling because it was the overcrowded condition of the prison system, rather than the character of the prisoner's conduct, that gave rise to the award. In our view, both of these submissions place undue emphasis on the legislature's subjective intent in granting the credits rather than on the consequences of their revocation.

In arriving at our holding in *Weaver*, we relied not on the subjective motivation of the legislature in enacting the gain-time credits, but rather on whether objectively the new statute "lengthen[ed] the period that someone in petitioner's position must spend in prison." *Id.*, at 33. Similarly, in this case, the fact that the generous gain-time provisions in Florida's 1983 statute were motivated more by the interest in avoiding overcrowding than by a desire to reward good behavior is not relevant to the essential inquiry demanded by the *Ex Post Facto* Clause: whether the cancellation of 1,860 days of accumulated provisional credits had the effect of lengthening petitioner's period of incarceration.

In our post-*Weaver* cases, we have also considered whether the legislature's action lengthened the sentence without examining the purposes behind the original sentencing scheme. In *Miller* v. *Florida,* 482 U. S. 423 (1987), we unanimously concluded that a revision in Florida's sentencing guidelines that went into effect between the date of petitioner's offense and the date of his conviction violated the *Ex Post Facto* Clause. Our determination that the new guideline was "'more onerous than the prior law,'" *id.,* at 431 (quoting *Dobbert* v. *Florida,* 432 U. S. 282, 294 (1977)), rested entirely on an objective appraisal of the impact of the change on the length of the offender's presumptive sentence. 482 U. S., at 431 ("Looking only at the change in primary offense points, the revised guidelines law clearly disadvantages petitioner and similarly situated defendants").

In *California Dept. of Corrections* v. *Morales,* 514 U. S. 499 (1995), we also relied entirely on objective considerations to support our conclusion that an amendment to California's parole procedures that decreased the frequency of parole hearings for certain offenders had not made any "change in the 'quantum of punishment,'" *id.,* at 508. The amendment at issue in *Morales* allowed the parole board, after holding an initial parole hearing, to defer for up to three years subsequent parole suitability hearings for prisoners convicted of multiple murders if the board found that it was unreasonable to expect that parole would be granted at a hearing during the subsequent years. We stated that the relevant inquiry is whether the "change alters the definition of criminal conduct or increases the penalty by which a crime is punishable." *Id.,* at 507, n. 3.[14] After making that inquiry, we found that “there is no reason to conclude that the amendment will have any effect on any prisoner’s actual term of confinement.” *Id.*, at 512. Our holding rested squarely on the conclusion that “a prisoner’s ultimate date of release would be entirely unaffected by the change in the timing of suitability hearings.” *Id.*, at 513. Although we held that “speculative and attenuated possibilit[ies]” of increasing the measure of punishment do not implicate the *Ex Post Facto* Clause, *id.*, at 509, the bulk of our analysis focused on the effect of the law on the inmate’s sentence.

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[14] Later in the opinion we restated the test in similar language: "In evaluating the constitutionality of the 1981 amendment, we must determine whether it produces a sufficient risk of increasing the measure of punish-

We did not imply in *Morales*, as respondents contend, that the constitutionality of retroactive changes in the quantum of punishment depended on the purpose behind the parole sentencing system. The only mention of legislative purpose in *Morales* was in the following passage:

> “In contrast to the laws at issue in *Lindsey* [v. *Washington*, 301 U. S. 397 (1937)], *Weaver*, and *Miller* (which had the purpose and effect of enhancing the range of available prison terms, see *Miller*, *supra*, at 433–434), the evident focus of the California amendment was merely ‘“‘to relieve the [Board] from the costly and time-consuming responsibility of scheduling parole hearings’”’ for prisoners who have no reasonable chance of being released. *In re Jackson*, 39 Cal. 3d 464, 473, 703 P. 2d 100, 106 (1985) (quoting legislative history).” *Id.*, at 507.

Thus, we concluded, the change at issue had neither the purpose nor the effect of increasing the quantum of punishment. Whether such a purpose alone would be a sufficient basis for concluding that a law violated the *Ex Post Facto* Clause when it actually had no such effect is a question the Court has never addressed. Moreover, in *Morales* our statements regarding purpose did not refer to the purpose behind the

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ment attached to the covered crimes.” *California Dept. of Corrections* v. *Morales*, 514 U. S., at 509.

creation of the original sentencing scheme; they referred instead to the question whether, in changing that sentencing scheme, the legislature intended to lengthen the inmate's sentence. To the extent that any purpose might be relevant in this case, it would only be the purpose behind the legislature's 1992 enactment of the offense-based exclusion. Here, unlike in *Morales*, there is no evidence that the legislature's change in the sentencing scheme was merely to save time or money. Rather, it is quite obvious that the retrospective change was intended to prevent the early release of prisoners convicted of murder-related offenses who had accumulated overcrowding credits.[15]

Respondents also argue that the retroactive cancellation of overcrowding credits is permissible because overcrowding gain-time—unlike the incentive gain-time at issue in *Weaver* which is used to encourage good prison behavior and prisoner rehabilitation—"b[ears] no relationship to the original penalty assigned the crime or the actual penalty calculated under the sentencing guidelines." Brief for Respondent Mathis 20. To the extent that respondents' argument rests on the notion that overcrowding gain-time is not "in some technical sense part of the sentence," *Weaver*, 450 U. S., at 32, this argument is foreclosed by our precedents. As we recognized in *Weaver*, retroactive alteration of parole or early release provisions, like the retroactive application of provisions that govern initial sentencing, implicates the *Ex Post Facto* Clause because such credits are "one determinant of petitioner's prison term . . . and . . . [the petitioner's] effective sentence is altered once this determinant is changed." *Ibid.* We explained in *Weaver* that the removal of such provisions can constitute an increase in punishment, because a "prisoner's eligibility for reduced imprisonment is a significant factor entering into both the defendant's decision to plea bargain and the judge's calculation of the sentence to be imposed." *Ibid.*

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[15] Indeed, the attorney general issued the 1992 opinion interpreting the statute to apply retroactively in response to concerns about the release of a notorious sex offender and murderer. See Fla. Op. Atty. Gen. 92–96, at 283, reprinted in Lodging, at 53.

Respondents argue that this reasoning does not apply to overcrowding credits because, when petitioner pleaded *nolo contendere,* he could not reasonably have expected to receive any such credits. The State, after all, could have alleviated the overcrowding problem in various ways: It could have built more prisons; it could have paroled a large category of nonviolent offenders; or it might have discontinued prosecution of some classes of victimless crimes. Respondents thus argue that the 1992 statute does not violate the *Ex Post Facto* Clause because, like the California amendment at issue in *Morales,* it "create[d] only the most speculative and attenuated possibility of producing the prohibited effect of increasing the measure of punishment for covered crimes." 514 U. S., at 509.[16] Given the fact that this petitioner was actually awarded 1,860 days of provisional credits and the fact that those credits were retroactively canceled as a result of the 1992 amendment, we find this argument singularly unpersuasive. In this case, unlike in *Morales,* the actual course of events makes it unnecessary to speculate about what might have happened. The 1992 statute has unquestionably disadvantaged petitioner because it resulted in his rearrest and prolonged his imprisonment. Unlike the California amendment at issue in *Morales*, the 1992 Florida statute did more than simply remove a mechanism that created an *opportunity* for early release for a class of prisoners whose release was unlikely; rather, it made ineligible for early release a class of prisoners who were previously eligible—including some, like petitioner, who had actually been released.[17]

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[16] The support for our conclusion in *Morales* that the Act was merely speculative has no counterpart in this case. In *Morales,* we first relied on the fact that the amendment affected a class of prisoners—multiple murderers—who had little chance of being released on parole. Second, we found that the amendment did not alter the date of the prisoner's initial parole suitability hearing, and therefore only affected those initially deemed unsuitable for parole. Lastly, we recognized that the parole board "retain[ed] the authority to tailor the frequency of subsequent suitability hearings to the particular circumstances of the individual prisoner." 514 U. S., at 511. Simply put, we rejected the inmate's claim in *Morales,* because it could not be said with any certainty that the amended statutory scheme was more "onerous" than at the time of the crime. See *id.,* at 509–510 (quoting *Dobbert* v. *Florida,* 432 U. S. 282, 294 (1977), for "refusing to accept 'speculation' that the effective punishment under a new statutory scheme would be 'more onerous' than under the old one").

IV

Although it does not appear that respondents advanced this argument in the papers filed in the District Court, the Court of Appeals, or in their brief in opposition to the petition for certiorari in this Court, they now argue that petitioner is not entitled to relief because his overcrowding credits were awarded pursuant to statutes enacted after the date of his offense rather than pursuant to the 1983 statute. We disagree.

The overcrowding statute in effect at the time of petitioner's crime was modified in subsequent years, but its basic elements remained the same: The statute provided for reductions in a prisoner's sentence when the population of the prison system exceeded a certain percentage of lawful capacity. At the time of petitioner's sentence in 1986, the emergency gain-time statute was in effect. Under that statute, when the prison population reached 98% of lawful capacity, the secretary of the department of corrections was required to advise the Governor and, after receiving the Governor's verification of the capacity certification, to declare a state of emergency whereupon the sentences of all eligible inmates "shall be reduced by the credit of up to 30 days gain-time, in 5-day increments, as may be necessary to reduce the inmate population to 97 percent of lawful capacity." Fla. Stat. § 944.598(2) (1983).[18]

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[17] We note that respondents do not argue, as the Magistrate Judge found, that the revocation of overcrowding credits is constitutional because such an act is merely "procedural." There is no merit to this argument in any case. We explained in *Dobbert* v. *Florida*, 432 U. S. 282 (1977), that a procedural statute is one that "simply alter[s] the methods employed in determining" whether the punishment is "to be imposed" rather than "chang[ing] . . . the quantum of punishment attached to the crime." *Id.*, at 293–294. Because the 1992 law did not change the method of determining the sentence, but rather lengthened the sentences of certain prisoners by making them ineligible for early release, it was not merely procedural.

The later statutes slightly modified the procedures outlined in the 1983 statute. The administrative gain-time statute enacted in 1987 (after petitioner's plea of *nolo contendere*) provided that the secretary, after certification to the Governor, "may grant up to a maximum of 60 days administrative gain-time." Fla. Stat § 944.276(1). Unlike the emergency gain-time statute, the administrative gain-time statute made the issuance of gain-time discretionary, and it contained certain offense-based exclusions. The provisional credits provision was enacted to replace administrative gain-time and is essentially the same, except that it provides for the issuance of gain-time when the prison reaches

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[18] Respondent Attorney General Butterworth suggests that under the emergency gain-time statute, the maximum award petitioner could have realized was 30 days of emergency gain-time. Therefore, according to the attorney general, it is unlikely that the gain-time statute would have had any effect on petitioner's sentence. We do not agree that the statute lends itself to such a reading. The statute required the department of corrections to advise the Governor "*whenever* the population of the state correctional system exceeds 98 percent of lawful capacity." Fla. Stat. § 944.598(1) (1983) (emphasis added). The duty to grant up to 30 days gain-time in 5-day increments was continuing until the inmate population reached 97% of lawful capacity. If the inmate population were to rise again to 98%, the Secretary was required to issue additional gain-time.

Moreover, the attorney general's reading of the emergency gain-time statute would also limit the award of gain-time under the administrative gain-time and provisional credits statute. These statutes contain wording similar to the emergency gain-time statute, see Fla. Stat. § 944.276(1) (1987); Fla. Stat. § 944.277(1) (1989), yet the State has not interpreted the statutes to limit the award of gain-time to a total of 60 days.

97.5% of lawful capacity, rather than 98%. Fla. Stat. § 944.277 (1988). See *Griffin* v. *Singletary*, 638 So. 2d 500 (Fla. 1994).

The changes in the series of statutes authorizing the award of overcrowding gain-time do not affect petitioner's core *ex post facto* claim. Petitioner could have accumulated gain-time under the emergency gain-time provision in much the same manner as he did under the provisional credits statute. We recognize, however, that although the differences in the statutes did not affect petitioner's central entitlement to gain-time, they may have affected the precise amount of gain-time he received. Between 1988 and 1992, the provisional credits were authorized when the prison reached 97.5% capacity rather than 98% capacity as under the emergency gain-time statute. If the prison population did not exceed 98% of capacity between 1988 and 1992, and if petitioner received provisional credits during those years, there is force to the argument that the cancellation of that portion of the 1,860-day total did not violate the *Ex Post Facto* Clause. Because this point was not adequately developed earlier in the proceeding, and because it may not in any event affect petitioner's entitlement to release, we leave it open for further consideration on remand.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, concurring in part and concurring in the judgment.

I understand the Court's opinion to hold that retroactively canceling petitioner's so-called "provisional credits" after he has used them to gain his freedom violates the *Ex Post Facto* Clause. This result naturally follows from our consistent view that the Clause is intended to prohibit laws that "retroactively alter the definition of crimes or increase the punishment for criminal acts." *Collins* v. *Youngblood,* 497 U. S. 37, 43 (1990).

Whether a particular law retroactively increases a criminal punishment is often a close question. In *California Dept. of Corrections* v. *Morales,* 514 U. S. 499 (1995), for example, respondent challenged a retroactive change to the frequency of parole hearings. Given that the retroactive change "create[d] only the most speculative and attenuated risk of increasing the measure of punishment attached to the covered crimes," we found no *ex post facto* violation. *Id.,* at 514.

Unlike in *Morales,* the increase in petitioner's punishment here was neither "speculative" nor "attenuated." Petitioner pleaded *nolo contendere* to a charge of attempted murder and was duly sentenced. During the period of his confinement, petitioner accumulated release credits under a state statute adopted in response to prison overcrowding. Those credits enabled petitioner to be freed from prison before his sentence (as originally imposed) had run. Shortly before petitioner secured his release, however, the Florida Legislature enacted a statute preventing certain categories of offenders from taking advantage of the provisional credits. Although petitioner's offense placed him among the offenders denied the opportunity to acquire those particular credits, the statute was not applied retroactively. Petitioner was thus released. The state attorney general subsequently issued an opinion giving the statute retroactive effect. The State thereafter rearrested petitioner and returned him to custody.

Under these narrow circumstances, I agree with the Court that the State's retroactive nullification of petitioner's previously accrued, and then used, release credits violates the Constitution's ban on *ex post facto* lawmaking. I do not, however, join the majority's discussion of *Weaver* v. *Graham,* 450 U. S. 24 (1981), which I find unnecessary to the resolution of this case. In *Weaver,* we considered whether a statute that merely altered the availability of "good conduct" credits ran afoul of the *Ex Post Facto* Clause. *Id.*, at 25. The present case involves not merely an effect on the availability of *future* release credits, but the retroactive elimination of credits already earned and used. Accordingly, I concur in part and concur in the judgment.

AUER ET AL. *v.* ROBBINS ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 95–897. Argued December 10, 1996—Decided February 19, 1997

Petitioners, St. Louis police sergeants and a lieutenant, sued respondent police commissioners for overtime pay under the Fair Labor Standards Act of 1938 (FLSA). Respondents argued that petitioners were "bona fide executive, administrative, or professional" employees exempted from overtime pay requirements by 29 U. S. C. § 213(a)(1). Under the Secretary of Labor's regulations, that exemption applies to employees paid a specified minimum amount on a "salary basis," which requires that the "compensation . . . not [be] subject to reduction because of variations in the quality or quantity of the work performed." Petitioners claimed that they did not meet this test because, under the terms of the Police Department Manual, their compensation could theoretically be reduced (though this was not the department's general practice) for a variety of disciplinary infractions related to the "quality or quantity" of their work. Both the District Court and the Eighth Circuit disagreed with that assertion, holding that the salary-basis test was satisfied as to all petitioners.

Held:

1. The "no disciplinary deductions" element of the salary-basis test reflects a permissible reading of the FLSA as it applies to public-sector employees. It is not apparent that the Secretary's interpretation of § 213(a)(1) is rendered unreasonable, as applied to public-sector employees, by the absence of other (non-salary-reduction) means of discipline, or by the peculiar needs of "quasi military" law enforcement organizations. The Secretary's approach must therefore be sustained, given § 213(a)(1)'s grant of broad authority to the Secretary to "defin[e] and delimi[t]" the statutory exemption's scope. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843. Respondents' procedural objection to the Secretary's failure to amend the disciplinary-deduction rule in the wake of *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U. S. 528, cannot be raised in the first instance in this lawsuit, but must be presented initially in a petition to the Secretary for amendatory rulemaking under the Administrative Procedure Act, 5 U. S. C. § 553(e). Pp. 456–459.

2. The Secretary has reasonably interpreted the salary-basis test to be met when an employee's compensation may not "as a practical mat-

ter" be adjusted in ways inconsistent with the test. The standard is violated, the Secretary says, if there is either an actual practice of making deductions or an employment policy that creates a "significant likelihood" of them. Because the regulation's critical phrase "subject to" comfortably bears the meaning the Secretary assigns, his interpretation of his own test is not "plainly erroneous," and thus is controlling. *Robertson* v. *Methow Valley Citizens Council*, 490 U. S. 332, 359. The Secretary's interpretation is not rendered unworthy of deference by the fact that it is set forth in an *amicus* brief; it is not a position adopted in response to litigation, and there is no reason to suspect that it does not reflect the Secretary's fair and considered judgment. Nor does the rule requiring that FLSA exemptions be narrowly construed against employers apply here; that rule governs judicial interpretation of statutes and regulations, and does not limit the Secretary's power to resolve ambiguities in his own regulations. Pp. 459–463.

3. The regulations entitle employers to preserve the exempt status of employees who have been subjected to pay deductions inconsistent with the salary-basis test by reimbursing those employees and promising to comply with the test in the future, so long as the deductions in question were either inadvertent or made for reasons other than lack of work. Pp. 463–464.

65 F. 3d 702, affirmed.

SCALIA, J., delivered the opinion for a unanimous Court.

Michael T. Leibig argued the cause and filed briefs for petitioners.

Irving L. Gornstein argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Acting Solicitor General Dellinger, Deputy Solicitor General Kneedler, J. Davitt McAteer, Allen H. Feldman, Nathaniel I. Spiller,* and *Mark S. Flynn.*

John B. Renick argued the cause for respondents. With him on the brief were *James N. Foster, Jr.,* and *Judith Anne Ronzio.**

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*Briefs of *amici curiae* urging reversal were filed for the American Federation of Labor and Congress of Industrial Organizations by *Jonathan P. Hiatt;* for the International Union of Police Associations AFL–CIO et al. by *Richard Cobb;* for the National Association of Police Organizations, Inc., by *William J. Johnson;* for the National Employment Law

JUSTICE SCALIA delivered the opinion of the Court.

The Fair Labor Standards Act of 1938 (FLSA), 52 Stat. 1060, as amended, 29 U. S. C. §§201 *et seq.*, exempts "bona fide executive, administrative, or professional" employees from overtime pay requirements. This case presents the question whether the Secretary of Labor's "salary-basis" test for determining an employee's exempt status reflects a permissible reading of the statute as it applies to public-sector employees. We also consider whether the Secretary has reasonably interpreted the salary-basis test to deny an

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Project, Inc., by *Kenneth E. Labowitz;* and for Non-Union Employees in the Private and Public Sectors by *Brenda J. Carter.*

Briefs of *amici curiae* urging affirmance were filed for the State of Wisconsin et al. by *James E. Doyle,* Attorney General of Wisconsin, *Richard Briles Moriarty,* Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Jeff Sessions* of Alabama, *Grant Woods* of Arizona, *Winston Bryant* of Arkansas, *Daniel E. Lungren* of California, *Gale A. Norton* of Colorado, *Richard Blumenthal* of Connecticut, *Robert A. Butterworth* of Florida, *Michael J. Bowers* of Georgia, *Alan G. Lance* of Idaho, *James E. Ryan* of Illinois, *Thomas J. Miller* of Iowa, *Carla J. Stovall* of Kansas, *J. Joseph Curran, Jr.,* of Maryland, *Frank J. Kelley* of Michigan, *Hubert H. Humphrey III* of Minnesota, *Mike Moore* of Mississippi, *Joseph P. Mazurek* of Montana, *Frankie Sue Del Papa* of Nevada, *Dennis C. Vacco* of New York, *Thomas W. Corbett, Jr.,* of Pennsylvania, *James S. Gilmore III* of Virginia, and *Christine O. Gregoire* of Washington; for the Chamber of Commerce of the United States of America et al. by *William J. Kilberg, Mark Snyderman, Stephan A. Bokat,* and *Mona C. Zeiberg;* for the New York City Transit Authority by *Richard Schoolman;* for the Department of Water and Power of the City of Los Angeles by *James K. Hahn, Thomas C. Hokinson,* and *Olga Hernandez Garau;* for the Labor Policy Association by *Sandra J. Boyd* and *Daniel V. Yager;* and for the National League of Cities et al. by *Richard Ruda, James I. Crowley,* and *Ronald S. Cooper.*

Briefs of *amici curiae* were filed for Broward County, Florida, by *John J. Copelan, Jr.,* and *Anthony C. Musto;* for the City of New York by *Paul A. Crotty, Leonard J. Koerner,* and *Timothy J. O'Shaughnessy;* for the League of California Cities et al. by *Arthur A. Hartinger, Louise H. Renne,* and *Jonathan V. Holtzman;* and for the International Association of Chiefs of Police, Inc., by *Jody M. Litchford, Wayne W. Schmidt, James P. Manak,* and *Roy Caldwell Kime.*

employee salaried status (and thus grant him overtime pay) when his compensation may "as a practical matter" be adjusted in ways inconsistent with the test.

I

Petitioners are sergeants and a lieutenant employed by the St. Louis Police Department. They brought suit in 1988 against respondents, members of the St. Louis Board of Police Commissioners, seeking payment of overtime pay that they claimed was owed under § 7(a)(1) of the FLSA, 29 U. S. C. § 207(a)(1). Respondents argued that petitioners were not entitled to such pay because they came within the exemption provided by § 213(a)(1) for "bona fide executive, administrative, or professional" employees.

Under regulations promulgated by the Secretary, one requirement for exempt status under § 213(a)(1) is that the employee earn a specified minimum amount on a "salary basis." 29 CFR §§ 541.1(f), 541.2(e), 541.3(e) (1996). According to the regulations, "[a]n employee will be considered to be paid 'on a salary basis' . . . if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed." § 541.118(a). Petitioners contended that the salary-basis test was not met in their case because, under the terms of the St. Louis Metropolitan Police Department Manual, their compensation could be reduced for a variety of disciplinary infractions related to the "quality or quantity" of work performed. Petitioners also claimed that they did not meet the other requirement for exempt status under § 213(a)(1): that their duties be of an executive, administrative, or professional nature. See §§ 541.1(a)–(e), 541.2(a)–(d), 541.3(a)–(d).

The District Court found that petitioners were paid on a salary basis and that most, though not all, also satisfied the duties criterion. The Court of Appeals affirmed in part and reversed in part, holding that both the salary-basis test and the duties test were satisfied as to all petitioners. 65 F. 3d 702 (CA8 1995). We granted certiorari. 518 U. S. 1016 (1996).[1]

II

The FLSA grants the Secretary broad authority to "defin[e] and delimi[t]" the scope of the exemption for executive, administrative, and professional employees. § 213(a)(1). Under the Secretary's chosen approach, exempt status requires that the employee be paid on a salary basis, which in turn requires that his compensation not be subject to reduction because of variations in the "quality or quantity of the work performed," 29 CFR § 541.118(a) (1996). Because the regulation goes on to carve out an exception from this rule for "[p]enalties imposed . . . for infractions of safety rules of major significance," § 541.118(a)(5), it is clear that the rule embraces reductions in pay for disciplinary violations. The Secretary is of the view that employees whose pay is adjusted for disciplinary reasons do not deserve exempt status because as a general matter true "executive, administrative, or professional" employees are not "disciplined" by piecemeal deductions from their pay, but are terminated, demoted, or given restricted assignments.

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[1] Respondents contend that the District Court lacked jurisdiction over petitioners' suit by virtue of the Eleventh Amendment. The Board of Police Commissioners, however, does not share the immunity of the State of Missouri. While the Governor appoints four of the board's five members, Mo. Rev. Stat. § 84.030 (1994), the city of St. Louis is responsible for the board's financial liabilities, § 84.210, and the board is not subject to the State's direction or control in any other respect. It is therefore not an "arm of the State" for Eleventh Amendment purposes. *Hess* v. *Port Authority Trans-Hudson Corporation*, 513 U. S. 30, 47–51 (1994); *Lake Country Estates, Inc.* v. *Tahoe Regional Planning Agency*, 440 U. S. 391, 401–402 (1979).

A

The FLSA did not apply to state and local employees when the salary-basis test was adopted in 1940. See 29 U. S. C. § 203(d) (1940 ed.); 5 Fed. Reg. 4077 (1940) (salary-basis test). In 1974 Congress extended FLSA coverage to virtually all public-sector employees, Pub. L. 93–259, § 6, 88 Stat. 58–62, and in 1985 we held that this exercise of power was consistent with the Tenth Amendment, *Garcia* v. *San Antonio Metropolitan Transit Authority,* 469 U. S. 528 (1985) (overruling *National League of Cities* v. *Usery,* 426 U. S. 833 (1976)). The salary-basis test has existed largely in its present form since 1954, see 19 Fed. Reg. 4405 (1954), and is expressly applicable to public-sector employees, see 29 CFR §§ 553.2(b), 553.32(c) (1996).

Respondents concede that the FLSA may validly be applied to the public sector, and they also do not raise any general challenge to the Secretary's reliance on the salary-basis test. They contend, however, that the "no disciplinary deductions" element of the salary-basis test is invalid for public-sector employees because as applied to them it reflects an unreasonable interpretation of the statutory exemption. That is so, they say, because the ability to adjust public-sector employees' pay—even executive, administrative or professional employees' pay—as a means of enforcing compliance with work rules is a necessary component of effective government. In the public-sector context, they contend, fewer disciplinary alternatives to deductions in pay are available.

Because Congress has not "directly spoken to the precise question at issue," we must sustain the Secretary's approach so long as it is "based on a permissible construction of the statute." *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837, 842–843 (1984). While respondents' objections would perhaps support a different application of the salary-basis test for public employees, we cannot conclude that they compel it. The Secretary's view that public employers are not *so* differently situated with regard to disciplining their employees as to require wholesale revision of his time-tested rule simply cannot be said to be unreasonable. We agree with the Seventh Circuit that no "principle of public administration that has been drawn to our attention . . . makes it imperative" that public-sector employers have the ability to impose disciplinary pay deductions on individuals employed in genuine executive, administrative, or professional capacities. *Mueller* v. *Reich,* 54 F. 3d 438, 442 (1995), cert. pending, No. 95–586.

Respondents appeal to the "quasi military" nature of law enforcement agencies such as the St. Louis Police Department. The ability to use the full range of disciplinary tools against even relatively senior law enforcement personnel is essential, they say, to maintaining control and discipline in organizations in which human lives are on the line daily. It is far from clear, however, that only a pay deduction, and not some other form of discipline—for example, placing the offending officer on restricted duties—will have the necessary effect. Because the FLSA entrusts matters of judgment such as this to the Secretary, not the federal courts, we cannot say that the disciplinary-deduction rule is invalid as applied to law enforcement personnel.

B

The more fundamental objection respondents have to the disciplinary-deduction rule is a procedural one: The Secretary has failed to give adequate consideration to whether it really makes sense to apply the rule to the public sector. Respondents' *amici* make the claim more specific: The Secretary's failure to revisit the rule in the wake of our *Garcia* decision was "arbitrary" and "capricious" in violation of the Administrative Procedure Act (APA), 5 U. S. C. § 706(2)(A).

It is certainly true that application of the disciplinary-deduction rule to public-sector employees raises distinct issues that may warrant the Secretary's formal consideration; this much is suggested by the veritable flood of post-*Garcia* litigation against public employers in this area, see, *e. g., Carpenter* v. *Denver,* 82 F. 3d 353 (CA10 1996), cert. pending, No. 95–2088; *Bankston* v. *Illinois,* 60 F. 3d 1249 (CA7 1995); *Shockley* v. *Newport News,* 997 F. 2d 18 (CA4 1993); *Atlanta Professional Firefighters Union, Local 134* v. *Atlanta,* 920 F. 2d 800 (CA11 1991). But respondents' complaints about the failure to amend the disciplinary-deduction rule cannot be raised in the first instance in the present suit. A court may certainly be asked by parties in respondents' position to disregard an agency regulation that is contrary to the substantive requirements of the law, or one that appears on the public record to have been issued in violation of procedural prerequisites, such as the "notice and comment" requirements of the APA, 5 U. S. C. § 553. But where, as here, the claim is not that the regulation is substantively unlawful, or even that it violates a clear procedural prerequisite, but rather that it was "arbitrary" and "capricious" not to conduct amendatory rulemaking (which might well have resulted in no change), there is no basis for the court to set aside the agency's action prior to any application for relief addressed to the agency itself. The proper procedure for pursuit of respondents' grievance is set forth explicitly in the APA: a petition to the agency for rulemaking, § 553(e), denial of which must be justified by a statement of reasons, § 555(e), and can be appealed to the courts, §§ 702, 706.

III

A primary issue in the litigation unleashed by application of the salary-basis test to public-sector employees has been whether, under that test, an employee's pay is "subject to" disciplinary or other deductions whenever there exists a theoretical possibility of such deductions, or rather only when there is something more to suggest that the employee is actually vulnerable to having his pay reduced. Petitioners in effect argue for something close to the former view; they contend that because the police manual nominally subjects all department employees to a range of disciplinary sanctions that includes disciplinary deductions in pay, and because a single sergeant was actually subjected to a disciplinary deduction, they are "subject to" such deductions and hence nonexempt under the FLSA.[2]

The Court of Appeals rejected petitioners' approach, saying that "[t]he mere possibility of an improper deduction in pay does not defeat an employee's salaried status" if no practice of making deductions exists. 65 F. 3d, at 710–711. In the Court of Appeals' view, a "one-time incident" in which a disciplinary deduction is taken under "unique circumstances" does not defeat the salaried status of employees. *Id.*, at 711. (In this case the sergeant in question, who had violated a residency rule, agreed to a reduction in pay as an alternative to termination of his employment.) The requirement of actual deductions was also imposed in an earlier ruling by the Eighth Circuit, *McDonnell* v. *Omaha*, 999 F. 2d 293, 296–297 (1993), cert. denied, 510 U. S. 1163 (1994), and in an Eleventh Circuit case, *Atlanta Professional Firefighters Union, Local 134* v. *Atlanta, supra,* at 805. Other Circuits have rejected the requirement, *Yourman* v. *Dinkins,* 84 F. 3d 655, 656 (CA2 1996), cert. pending, No. 96–152; *Carpenter* v. *Denver, supra,* at 359–360; *Bankston* v. *Illinois, supra,* at 1253; *Kinney* v. *District of Columbia,* 994 F. 2d 6, 10–11 (CADC 1993); *Abshire* v. *County of Kern,* 908 F. 2d 483, 486–488 (CA9 1990), cert. denied, 498 U. S. 1068 (1991); or else have imposed a requirement of actual deductions only in the face of vagueness or ambiguity in the governing policy, *Michigan Assn. of Governmental Employees* v. *Michigan Dept. of Corrections,* 992 F. 2d 82, 86 (CA6 1993).

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[2] Petitioners also contend that additional sergeants were actually subjected to disciplinary deductions, but that fact is not established by the portions of the record petitioners cite.

The Secretary of Labor, in an *amicus* brief filed at the request of the Court, interprets the salary-basis test to deny exempt status when employees are covered by a policy that permits disciplinary or other deductions in pay "as a practical matter." That standard is met, the Secretary says, if there is either an actual practice of making such deductions or an employment policy that creates a "significant likelihood" of such deductions. The Secretary's approach rejects a wooden requirement of actual deductions, but in their absence it requires a clear and particularized policy—one which "effectively communicates" that deductions will be made in specified circumstances. This avoids the imposition of massive and unanticipated overtime liability (including the possibility of substantial liquidated damages, see, *e. g.*, *Kinney* v. *District of Columbia*, *supra*, at 12) in situations in which a vague or broadly worded policy is nominally applicable to a whole range of personnel but is not "significantly likely" to be invoked against salaried employees.

Because the salary-basis test is a creature of the Secretary's own regulations, his interpretation of it is, under our jurisprudence, controlling unless "'plainly erroneous or inconsistent with the regulation.'" *Robertson* v. *Methow Valley Citizens Council*, 490 U. S. 332, 359 (1989) (quoting *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410, 414 (1945)). That deferential standard is easily met here. The critical phrase "subject to" comfortably bears the meaning the Secretary assigns. See American Heritage Dictionary 1788 (3d ed. 1992) (def. 2: defining "subject to" to mean "prone; disposed"; giving as an example "a child who is subject to colds"); Webster's New International Dictionary 2509 (2d ed. 1950) (def. 3: defining "subject to" to mean "[e]xposed; liable; prone; disposed"; giving as an example "a country subject to extreme heat").

The Secretary's approach is usefully illustrated by reference to this case. The policy on which petitioners rely is contained in a section of the police manual that lists a total of

58 possible rule violations and specifies the range of penalties associated with each. All department employees are nominally covered by the manual, and some of the specified penalties involve disciplinary deductions in pay. Under the Secretary's view, that is not enough to render petitioners' pay "subject to" disciplinary deductions within the meaning of the salary-basis test. This is so because the manual does not "effectively communicate" that pay deductions are an anticipated form of punishment for employees *in petitioners' category,* since it is perfectly possible to give full effect to every aspect of the manual without drawing any inference of that sort. If the statement of available penalties applied solely to petitioners, matters would be different; but since it applies both to petitioners and to employees who are unquestionably not paid on a salary basis, the expressed availability of disciplinary deductions may have reference only to the latter. No clear inference can be drawn as to the likelihood of a sanction's being applied to employees such as petitioners. Nor, under the Secretary's approach, is such a likelihood established by the one-time deduction in a sergeant's pay, under unusual circumstances.

Petitioners complain that the Secretary's interpretation comes to us in the form of a legal brief; but that does not, in the circumstances of this case, make it unworthy of deference. The Secretary's position is in no sense a "*post hoc* rationalizatio[n]" advanced by an agency seeking to defend past agency action against attack, *Bowen* v. *Georgetown Univ. Hospital,* 488 U. S. 204, 212 (1988). There is simply no reason to suspect that the interpretation does not reflect the agency's fair and considered judgment on the matter in question. Petitioners also suggest that the Secretary's approach contravenes the rule that FLSA exemptions are to be "narrowly construed against . . . employers" and are to be withheld except as to persons "plainly and unmistakably within their terms and spirit." *Arnold* v. *Ben Kanowsky, Inc.,* 361 U. S. 388, 392 (1960). But that is a rule governing judicial interpretation of statutes and regulations, not a limitation on the Secretary's power to resolve ambiguities in his own regulations. A rule requiring the Secretary to construe his own regulations narrowly would make little sense, since he is free to write the regulations as broadly as he wishes, subject only to the limits imposed by the statute.

IV

One small issue remains unresolved: the effect upon the exempt status of Sergeant Guzy, the officer who violated the residency requirement, of the one-time reduction in his pay. The Secretary's regulations provide that if deductions which are inconsistent with the salary-basis test—such as the deduction from Guzy's pay—are made in circumstances indicating that "there was no intention to pay the employee on a salary basis," the exemption from the FLSA is "[not] applicable to him during the entire period when such deductions were being made." 29 CFR § 541.118(a)(6) (1996). Conversely, "where a deduction not permitted by [the salary-basis test] is inadvertent, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employee for such deductions and promises to comply in the future." *Ibid.*

Petitioners contend that the initial condition in the latter provision (which enables the employer to take corrective action) is not satisfied here because the deduction from Guzy's pay was not inadvertent. That it was not inadvertent is true enough, but the plain language of the regulation sets out "inadverten[ce]" and "made for reasons other than lack of work" as *alternative* grounds permitting corrective action. Petitioners also contend that the corrective provision is unavailable to respondents because Guzy has yet to be reimbursed for the residency-based deduction; in petitioners' view, reimbursement must be made immediately upon the discovery that an improper deduction was made. The language of the regulation, however, does not address the timing of reimbursement, and the Secretary's *amicus* brief informs us that he does not interpret it to require immediate payment. Respondents are entitled to preserve Guzy's exempt status by complying with the corrective provision in § 541.118(a)(6).

* * *

Petitioners have argued, finally, that respondents failed to carry their affirmative burden of establishing petitioners' exempt status even under the Secretary's interpretation of the salary-basis test. Since, however, that argument was inadequately preserved in the prior proceedings, we will not consider it here. See *Adickes* v. *S. H. Kress & Co.*, 398 U. S. 144, 147, n. 2 (1970). The judgment of the Court of Appeals is affirmed.

It is so ordered.

DUNN ET AL. *v.* COMMODITY FUTURES TRADING COMMISSION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 95–1181. Argued November 13, 1996—Decided February 25, 1997

The Commodity Futures Trading Commission (CFTC) brought this action, claiming that petitioners solicited investments in and operated a fraudulent scheme involving transactions in foreign currency options in violation of the Commodity Exchange Act (CEA) and CFTC regulations. Petitioners allegedly engaged in the transactions by contracting directly with international banks and others, rather than using a regulated exchange or board of trade. This is known as trading in the "off-exchange" or "over-the-counter" market. Both petitioners and their customers suffered heavy losses. The District Court appointed a temporary receiver to take control of petitioners' property, rejecting their defense that the transactions were exempt from the CEA under the so-called "Treasury Amendment," which excepts "transactions in foreign currency" unless they involve a sale "for future delivery" "conducted on a board of trade." The Court of Appeals affirmed.

Held: The Treasury Amendment exempts from CFTC regulation off-exchange trading in foreign currency options. Options (transactions in which the buyer purchases the right, but not the obligation, to buy or sell an agreed amount of a commodity at a set rate at any time prior to the option's expiration) like those at issue here are plainly "transactions in foreign currency" within the statute's meaning. The Court is not persuaded by any of the CFTC's arguments in support of a narrower reading that would exempt futures contracts (agreements to buy or sell a specified quantity of a commodity at a particular price for delivery at a set future date) without exempting options. The normal reading of the last-quoted phrase encompasses all transactions in which foreign currency is the fungible good whose fluctuating market price provides the motive for trading. Reading the text to include only the actual purchase or sale of foreign currency, as the CFTC urges, violates the ordinary meaning of the key word "in." On the CFTC's reasoning, the exemption's application to futures contracts could not be sustained, in clear contravention of Congress' intent to exempt off-exchange foreign currency futures from CFTC regulation. This interpretation would also render the provision mere surplusage, and is not supported by the Treasury Amendment's legislative history. Given the history of evolving congressional regulation in this area, it is natural to read the exemption as a complete exclusion of foreign currency transactions from the regulatory scheme, except to the extent that the proviso for transactions "conducted on a board of trade" qualifies that exclusion. Contrary to the CFTC's position, there is little to suggest that elsewhere in the CEA Congress used the term transactions "involving" a particular commodity to describe options, and transactions "in" the commodity to indicate a narrower exclusion. The proviso "conducted on a board of trade" does not aid the CFTC's cause because a broad reading of the proviso to include both options and futures is faithful to the contemporary legal context in which the amendment was drafted. The arguments favoring each side in the important public policy dispute over whether off-exchange foreign currency options should be exempt from CEA regulation are best addressed to the Congress, not the courts. Pp. 468–480.

58 F. 3d 50, reversed and remanded.

STEVENS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 480.

Gary D. Stumpp argued the cause for petitioners. With him on the briefs was *Adam M. Bond.*

Jeffrey P. Minear argued the cause for respondents. With him on the brief for respondent Commodity Futures Trading Commission were *Acting Solicitor General Dellinger, Deputy Solicitor General Kneedler, Pat G. Nicolette, Jay L. Witkin,* and *Gracemary Rizzo.**

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether Congress has authorized the Commodity Futures Trading Commission (CFTC or

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*Briefs of *amici curiae* urging reversal were filed for Crédit Lyonnais et al. by *John M. Quitmeyer, Danforth Newcomb, Kent T. Stauffer,* and *David M. Lindley;* and for the Foreign Exchange Committee et al. by *Kenneth M. Raisler, Edward J. Rosen, Peter Buscemi,* and *Maris M. Rodgon.*

Briefs of *amici curiae* urging affirmance were filed for the Board of Trade of the City of Chicago by *Kenneth W. Starr, Mark D. Young,* and *Richard A. Cordray;* and for the Chicago Mercantile Exchange by *Jerrold E. Salzman* and *James T. Malysiak.*

Commission) to regulate "off-exchange" trading in options to buy or sell foreign currency.

I

The CFTC brought this action in 1994, alleging that, beginning in 1992, petitioners solicited investments in and operated a fraudulent scheme in violation of the Commodity Exchange Act (CEA), 7 U. S. C. § 1 *et seq.*, and CFTC regulations.[1] App. 10. See 7 U. S. C. § 6c(b); 17 CFR § 32.9 (1996).[2] The CFTC's complaint, affidavits, and declarations submitted to the District Court indicate that customers were told their funds would be invested using complex strategies involving options to purchase or sell various foreign currencies. App. 8. Petitioners apparently did in fact engage in many such transactions. *Ibid.;* 58 F. 3d 50, 51 (CA2 1995). To do so, they contracted directly with international banks and others without making use of any regulated exchange or board of trade. In the parlance of the business, petitioners traded in the "off-exchange" or "over-the-counter" (OTC) market.[3] *Ibid.* No options were ever sold directly to petitioners' customers. However, their positions were tracked through internal accounts, and investors were provided weekly reports showing the putative status of their holdings. Petitioners and their customers suffered heavy losses. *Id.*, at 51–52. Subsequently, the CFTC commenced these proceedings.

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[1] The complaint names as defendants William C. Dunn, Delta Consultants, Inc., Delta Options, Ltd., and Nopkine Co., Ltd. App. 6–7. Only Dunn and Delta Consultants are petitioners here.

[2] The statute provides: "No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as, an 'option' . . . contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe." 7 U. S. C. § 6c(b). The regulations at issue here further make it unlawful "for any person directly or indirectly . . . [t]o cheat or defraud or attempt to cheat or defraud any other person; . . . [t]o make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; . . . [or] [t]o deceive or attempt to deceive any other person by any means whatsoever . . . in or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction." 17 CFR § 32.9 (1996).

Rejecting petitioners' defense that off-exchange transactions in foreign currency options are exempt from the CEA, the District Court appointed a temporary receiver to take control of their property for the benefit of their customers. App. to Pet. for Cert. 5b–6b. Relying on Circuit precedent,[4] and acknowledging a conflict with another Circuit,[5] the Court of Appeals affirmed. 58 F. 3d, at 54. We granted certiorari to resolve the conflict. 517 U. S. 1219 (1996). For the reasons that follow, we reverse and remand for further proceedings.

II

The outcome of this case is dictated by the so-called "Treasury Amendment" to the CEA. 88 Stat. 1395, 7 U. S. C. § 2(ii). We have previously reviewed the history of the CEA and generally described how it authorizes the CFTC to regulate the "volatile and esoteric" market in futures contracts in fungible commodities. See *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Curran,* 456 U. S. 353, 356, 357–367 (1982). As a part of the 1974 amendments that created the CFTC and dramatically expanded the coverage of the statute to include nonagricultural commodities "in which contracts for future delivery are presently or in the future dealt in," see 88 Stat. 1395, 7 U. S. C. § 2 (1970 ed., Supp. IV), Congress enacted the following exemption, which has come to be known as the "Treasury Amendment":

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[3] We are informed by *amici* that participants in the "highly evolved, sophisticated" OTC foreign currency markets include "commercial and investment banks, . . . foreign exchange dealers and brokerage companies, corporations, money managers (including pension, mutual fund and commodity pool managers), commodity trading advisors, insurance companies, governments and central banks." Brief for Foreign Exchange Committee et al. as *Amici Curiae* 8. These markets serve a variety of functions, including providing ready access to foreign currency for international transactions, and allowing businesses to hedge against the risk of exchange rate movements. *Id.*, at 8–9.

[4] 58 F. 3d 50, 53 (CA2 1995) (citing *Commodity Futures Trading Comm'n* v. *American Bd. of Trade*, 803 F. 2d 1242 (CA2 1986)).

[5] 58 F. 3d, at 54 (citing *Salomon Forex, Inc.* v. *Tauber*, 8 F. 3d 966 (CA4 1993), cert. denied, 511 U. S. 1031 (1994)).

> "Nothing in this chapter shall be deemed to govern or in any way be applicable to *transactions in foreign currency,* security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade." 7 U. S. C. § 2(ii) (emphasis added).

The narrow issue that we must decide is whether the italicized phrase ("transactions in foreign currency") includes transactions in options to buy or sell foreign currency. An option, as the term is understood in the trade, is a transaction in which the buyer purchases from the seller for consideration the right, but not the obligation, to buy or sell an agreed amount of a commodity at a set rate at any time prior to the option's expiration.[6] We think it plain that foreign currency options are "transactions in foreign currency" within the meaning of the statute. We are not persuaded by any of the arguments advanced by the CFTC in support of a narrower reading that would exempt futures contracts (agreements to buy or sell a specified quantity of a commodity at a particular price for delivery at a set future date)[7] without exempting options.

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[6] See G. Munn & F. Garcia, Encyclopedia of Banking and Finance 736 (8th ed. 1983) (hereinafter Munn & Garcia); C. Luca, Trading in the Global Currency Markets 243 (1995) (hereinafter Luca). Participants in these markets refer to an option that provides the right to sell currency as a "put," and one that provides the right to buy as a "call." Munn & Garcia 737; Luca 270, 272. Options can themselves be traded, at values that vary depending upon the exchange rate of the underlying currencies prior to the option's expiration. Brief for Foreign Exchange Committee et al. as *Amici Curiae* 5, n. 5.

III

"[A]bsent any 'indication that doing so would frustrate Congress's clear intention or yield patent absurdity, our obligation is to apply the statute as Congress wrote it.'" *Hubbard* v. *United States*, 514 U. S. 695, 703 (1995) (quoting *BFP* v. *Resolution Trust Corporation*, 511 U. S. 531, 570 (1994) (SOUTER, J., dissenting)). The CFTC argues, and the Court of Appeals held, that an option is not itself a transaction "in" foreign currency, but rather is just a contract right to engage in such a transaction at a future date. Brief for CFTC 30–31; 58 F. 3d, at 53. Hence, the Commission submits that the term "transactions in foreign currency" includes only the "actual exercise of an option (*i. e.*, the actual purchase or sale of foreign currency)" but not the purchase or sale of an option itself. Brief for CFTC 31. That reading of the text seems quite unnatural to us, and we decline to adopt it.

The more normal reading of the key phrase encompasses all transactions in which foreign currency is the fungible good whose fluctuating market price provides the motive for trading. The CFTC's interpretation violates the ordinary meaning of the key word "in," which is usually thought to be "synonymous with [the] expressions 'in regard to,' 'respecting,' [and] 'with respect to.'" Black's Law Dictionary 758 (6th ed. 1990); see *Babbitt* v. *Sweet Home Chapter, Communities for Great Ore.*, 515 U. S. 687, 697–698 (1995). There can be no question that the purchase or sale of a foreign currency option is a transaction "respecting" foreign currency. We think it equally plain as a matter of ordinary meaning that such an option is a transaction "in" foreign currency for purposes of the Treasury Amendment.

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[7] See Munn & Garcia 414; City of New York Bar Association Committee on Futures Regulation, The Evolving Regulatory Framework for Foreign Currency Trading 9 (1986).

Indeed, adopting the Commission's reading would deprive the exemption of the principal effect Congress intended. The CFTC acknowledges that futures contracts fall squarely within the Treasury Amendment's exemption, Brief for CFTC 30, and there is no question that the exemption of off-exchange foreign currency futures from CFTC regulation was one of Congress' primary goals.[8] Yet on the CFTC's reasoning the exemption's application to futures contracts could not be sustained.

A futures contract is no more a transaction "in" foreign currency as the Commission understands the term than an option. The Commission argues that because a futures contract creates a legal obligation to purchase or sell currency on a particular date, it is somehow more clearly a transaction "in" the underlying currencies than an option, which generates only the right to engage in a transaction. *Id.*, at 30–32. This reasoning is wholly unpersuasive. No currency changes hands at the time a futures contract is made. And, the existence of a futures contract does not guarantee that currency will actually be exchanged. Indeed, the Commission concedes that, in most cases, futures contracts are "extinguished before delivery by entry into an offsetting futures contract." *Id.*, at 30 (citing 1 T. Snider, Regulation of the Commodities Futures and Options Markets § 2.05 (2d ed. 1995) (hereinafter Snider)); see also Munn & Garcia 414. Adopting the CFTC's reading would therefore place both futures and options outside the exemption, in clear contravention of Congress' intent.

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[8] The amendment was enacted on the suggestion of the Treasury Department at the time of a dramatic expansion in the scope of federal commodities regulation. The Department expressed concerns in a letter to the relevant congressional committee that this development might lead, *inter alia*, to the unintended regulation of the off-exchange market in foreign currency futures. See S. Rep. No. 93–1131, pp. 49–50 (1974) ("The Department feels strongly that foreign currency futures trading, other than on organized exchanges, should not be regulated by the new agency") (letter of Donald Ritger, Acting General Counsel). The Treasury Amendment, which tracks almost verbatim the language proposed by the Department, cf. *id.*, at 51, was included in the legislation to respond to these concerns. *Id.*, at 23. The CFTC is therefore plainly correct to reject the suggestion of its *amici* that the Treasury Amendment's exemption be construed not to include futures contracts within its coverage. See Brief for Chicago Mercantile Exchange as *Amicus Curiae* 17–18; Brief for Board of Trade of City of Chicago as *Amicus Curiae* 10.

Furthermore, this interpretation would leave the Treasury Amendment's exemption for "transactions in foreign currency" without any significant effect at all, because it would limit the scope of the exemption to "forward contracts" (agreements that anticipate the actual delivery of a commodity on a specified future date) and "spot transactions" (agreements for purchase and sale of commodities that anticipate near-term delivery).[9] Both are transactions "in" a commodity as the CFTC would have us understand the term. But neither type of transaction for *any* commodity was subject to intensive regulation under the CEA at the time of the Treasury Amendment's passage. See 7 U. S. C. § 2 (1970 ed., Supp. IV) ("term 'future delivery,' as used in this chapter, shall not include any sale of any cash commodity for deferred shipment or delivery"); Snider § 9.01; J. Markham, The History of Commodity Futures Trading and Its Regulation 201–203 (1987). Our reading of the exemption is therefore also consonant with the doctrine that legislative enactments should not be construed to render their provisions mere surplusage. See *Babbitt*, 515 U. S., at 698 (noting "reluctance to treat statutory terms as surplusage"); *Mountain States Telephone & Telegraph Co.* v. *Pueblo of Santa Ana*, 472 U. S. 237, 249 (1985).

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[9] See Snider § 9.01 (defining "spot transactions" and "forward contracts").

Finally, including options in the exemption is consistent with Congress' purpose in enacting the Treasury Amendment. Although at the time the Treasury Amendment was drafted a thriving off-exchange market in foreign currency futures was in place, the closely related options market at issue here had not yet developed. See City of New York Bar Association Committee on Futures Regulation, The Evolving Regulatory Framework for Foreign Currency Trading 18, 23 (1986). The CFTC therefore suggests that Congress could not have intended to exempt foreign currency options from the CEA's coverage. Brief for CFTC 41–42. The legislative history strongly suggests to the contrary that Congress' broad purpose in enacting the Treasury Amendment was to provide a general exemption from CFTC regulation for sophisticated off-exchange foreign currency trading, which had previously developed entirely free from supervision under the commodities laws.

In explaining the Treasury Amendment, the Senate Committee Report notes in broad terms that the amendment "provides that inter-bank trading of foreign currencies and specified financial instruments is not subject to Commission regulation." S. Rep. No. 93–1131, p. 6 (1974).[10] Elsewhere, the Report again explains in general terms—without making reference to any distinction between options and futures—that the legislation

> "included an amendment to clarify that the provisions of the bill are not applicable to trading in foreign currencies and certain enumerated financial instruments unless such trading is conducted on a formally organized futures exchange. A great deal of the trading in foreign currency in the United States is carried out through an informal network of banks and tellers. The Committee

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[10] Similarly, the Conference Committee Report points out that the Treasury Amendment "provides that interbank trading of foreign currencies and specified financial instruments is not subject to Commission regulation." H. R. Conf. Rep. No. 93–1383, p. 35 (1974).

> believes that this market is more properly supervised by the bank regulatory agencies and that, therefore, regulation under this legislation is unnecessary." *Id.*, at 23.

Similarly, the Treasury Department submitted to the Chairman of the relevant Senate Committee a letter that was the original source of the Treasury Amendment. While focusing on the need to exempt the foreign currency futures market from CFTC regulation, the letter points out that the "participants in this market are sophisticated and informed institutions," and "the [CFTC] would clearly not have the expertise to regulate a complex banking function and would confuse an already highly regulated business sector." *Id.*, at 50 (letter of Donald Ritger, Acting General Counsel). The Department further explained that "new regulatory limitations and restrictions could have an adverse impact on the usefulness and efficiency of foreign exchange markets for traders and investors." *Ibid.*

Although the OTC market for foreign currency options had not yet developed in 1974, the reasons underlying the Treasury Department's express desire at that time to exempt off-exchange commodity futures trading from CFTC regulation apply with equal force to options today. Foreign currency options and futures are now traded in the same off-exchange markets, by the same entities, for quite similar purposes. See Brief for Foreign Exchange Committee et al. as *Amici Curiae* 19. Contrary to the Commission's suggestion, we therefore think the purposes underlying the Treasury Amendment are most properly fulfilled by giving effect to the plain meaning of the language as Congress enacted it.

The CFTC rejoins that the Treasury Amendment should be construed in the light of Congress' history of regulating options more strictly than futures. See Snider §§ 7.03–7.04; Brief for CFTC 38–39. The Commission submits that this distinction was motivated by the view that options lend themselves more readily to fraudulent schemes than futures contracts. Hence, the CFTC argues that Congress would have acted reasonably and consistently with prior practice had it regulated commodities differently from options. While that may be true, we give only slight credence to these general historical considerations, which are unsupported by statutory language, or any evidence evocative of the particular concerns focused on by the legislators who enacted the Treasury Amendment. We think the history of the Treasury Amendment suggests—contrary to the CFTC's view—that it was intended to take all transactions relating to foreign currency not conducted on a board of trade outside of the CEA's ambit. This interpretation is consistent with the fact that, prior to the enactment of the CEA in 1974, foreign currency trading had been entirely unregulated under the commodities laws.

Our interpretation is also consonant with the history of evolving congressional regulation in this area. That history has been one of successively broadening the coverage of regulation by the addition of more and more commodities to the applicable legislation.[11] It seems quite natural in this context to read the Treasury Amendment's exemption of transactions in foreign currencies as a complete exclusion of that commodity from the regulatory scheme, except, of course, to the extent that the proviso for transactions "conducted on a board of trade" qualifies that exclusion. See 7 U. S. C. § 2(ii).

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[11] The Grain Futures Act, enacted by Congress in 1922 to authorize the Secretary of Agriculture to supervise trading in grain futures on "contract markets," defined the regulated commodities to include "wheat, corn, oats, barley, rye, flax, and sorghum." 42 Stat. 998. In 1936 Congress expanded the coverage of the legislation to add further agricultural commodities, including cotton, rice, butter, eggs, and Irish potatoes. Ch. 545, 49 Stat. 1491. (The contrast between the title of the 1936 Act—"Commodity Exchange Act"—and the title of its predecessor—"Grain Futures Act"—suggests that an easy way to describe the coverage of the legislation is to identify the commodities that it regulates.) In 1968 the coverage of the legislation was again expanded, this time to include livestock and livestock products. 82 Stat. 26. The 1974 amendment expanded the coverage of the statute to include nonagricultural commodities and, appropriately, replaced regulation by the Secretary of Agriculture with regulation by a new commission whose title included the word "Commodity."

IV

To buttress its reading of the statute, the CFTC argues that elsewhere in the CEA Congress referred to transactions "involving" a particular commodity to describe options or used other "more encompassing terminology," rather than what we are told is the narrower term transactions "in" the commodity, which was reserved for futures, spot transactions, and forward contracts. Brief for CFTC 30–33. Not only do we think it unlikely that Congress would adopt such a subtle method of drawing important distinctions, there is little to suggest that it did so.

Congress' use of these terms has been far from consistent. Most strikingly, the use of the word "involving" in the Treasury Amendment itself completely eviscerates the force of the Commission's argument. After setting forth exemptions for, *inter alia*, "transactions in foreign currency," the amendment contains a proviso sweeping back into the statute's coverage "such transactions *involv[ing]* the sale thereof for future delivery conducted on a board of trade." 7 U. S. C. § 2(ii) (emphasis added). As we have already noted, the CFTC agrees that futures contracts are a subset of "transactions in foreign currency." The Commission further submits that the proviso uses the word "involve" to make the exemption inapplicable to those futures contracts that are conducted on a board of trade. This contradicts the "in" versus "involving" distinction. We would expect on the Commission's reasoning that this provision would refer to "transactions *in* futures." The use of the term "involving" instead, within the very amendment that the CFTC claims embraces this distinction, weighs heavily against the view that any such distinction was intended by Congress.[12]

The CFTC argues further that the proviso properly understood aids its cause. The proviso sweeps back into the CFTC's jurisdiction otherwise exempt "transactions in foreign currency" that "involve the sale thereof for future delivery" and are "conducted on a board of trade." Since the proviso refers to futures without mentioning options, the Commission submits that the exemption itself should be read only to cover futures because Congress cannot reasonably have intended to regulate exchange trading in foreign currency futures without also regulating exchange trading in such options. We agree that Congress intended no such anomaly. But we are satisfied that the anomaly is best avoided by reading the proviso broadly rather than reading the exemption narrowly.

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[12] Similarly, the statute refers at one point to "[t]ransactions *in* commodities *involving* the sale thereof for future delivery . . . and known as 'futures.'" 7 U. S. C. § 5 (emphasis added). Had Congress meant to maintain the Commission's distinction, we would not have expected the Legislature to use the words "in" and "involving" loosely in the same sentence to refer to futures, which the CFTC informs us are transactions "in" (but not "involving") foreign currency. Similarly, the statute refers elsewhere to "transaction[s] *in an option* on foreign currency." § 6c(f) (emphasis added). If Congress had spoken in the manner the CFTC suggests, that provision would instead use the phrase "transactions *involving* an option."

The statute's general jurisdictional provision also fails to maintain the distinction the Commission presses. The CEA provides that the CFTC "shall have exclusive jurisdiction . . . with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an 'option' . . .), and transactions *involving* contracts of sale of a commodity for future delivery." § 2(i) (emphasis added). The Commission submits that this language gives the CFTC regulatory authority over options on futures contracts, see Snider § 10.11, and argues that the use of the word "involving" is therefore in keeping with its interpretation of the statutory scheme. See Brief for CFTC 32. But § 2(i) provides the CFTC with exclusive jurisdiction over far more. Among other things, it explicitly grants jurisdiction over any "transactio[n] *involving* contracts of sale of a commodity for future delivery," plainly meaning at a minimum ordinary futures contracts, which the Commission otherwise insists are transactions "in" commodities.

The proviso's language fairly accommodates inclusion of both options and futures. To fall within the proviso, a transaction must "*involve* the sale [of foreign currency] for future delivery." § 2(ii) (emphasis added). Because options convey the right to buy or sell foreign currency at some future time prior to their expiration, they are transactions "involv-[ing]" or related to the sale of foreign currency for future delivery. Thus, both futures and options are covered by both the exemption and the proviso. While that may not be the only possible reading of the literal text, and we do not intend to suggest that a similar construction would be required with respect to other provisions of the CEA, our interpretation is faithful to the "contemporary legal context" in which the Treasury Amendment was drafted. *Cannon* v. *University of Chicago*, 441 U. S. 677, 699 (1979); see also *Massachusetts* v. *Morash*, 490 U. S. 107, 115 (1989) (noting that " 'in expounding a statute, we [are] not . . . guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy' ") (quoting *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U. S. 41, 51 (1987)).

Finally, the CFTC calls our attention to statements in the legislative history of a 1982 amendment to the CEA,[13] indicating that the drafters of that amendment believed that the CFTC had the authority to regulate foreign currency options "when they are traded other than on a national securities exchange." See S. Rep. No. 97–384, p. 22 (1982). Those statements, at best, might be described as "legislative dicta" because the 1982 amendment itself merely resolved a conflict between the Securities Exchange Commission and the CFTC concerning their respective authority to regulate transactions on an exchange. See Snider § 10.24. The amendment made no change in the law applicable to off-exchange trading. Although these "dicta" are consistent with the position that the CFTC advocates, they shed no light on the intent of the authors of the Treasury Amendment that had been adopted eight years earlier. See, *e. g., Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U. S. 825, 839–840 (1988).[14]

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[13] Futures Trading Act of 1982, Tit. I, § 102, 96 Stat. 2296, 7 U. S. C. § 6c(f).

V

Underlying the statutory construction question before us, we recognize that there is an important public policy dispute—with substantial arguments favoring each side. Petitioners, their *amici*, and the Treasury Department argue that if off-exchange foreign currency options are not treated as exempt from CEA regulation, the increased costs associated with unnecessary regulation of the highly sophisticated OTC foreign currency markets might well drive this business out of the United States.[15] The Commission responds that to the extent limited exemptions from regulation are necessary, it will provide them, but argues that options are particularly susceptible to fraud and abuse if not carefully policed. Brief for CFTC 26, 49. As the Commission properly acknowledges, however, these are arguments best addressed to the Congress, not the courts. See *United States* v. *Rutherford*, 442 U. S. 544, 555 (1979). Lacking the expertise or authority to assess these important competing claims, we note only that "a literal construction of a statute" does not "yiel[d] results so manifestly unreasonable that they could not fairly be attributed to congressional design." *Ibid.*

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[14] Though the CFTC's brief disclaims any need for it, Brief for CFTC 48, at oral argument the Commission requested for the first time that we give deference to its interpretation of the Treasury Amendment as the agency "charged with administering" it. *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U. S. 735, 739 (1996); Tr. of Oral Arg. 54; see *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). If *Chevron* principles were applicable, we are unsure that the CFTC's position would be the one owed deference. As the Commission concedes, Brief for CFTC 25, the Treasury Department has taken a quite different view of the statute—one consonant with the interpretation set forth here—to which petitioners argue deference is owed if *Chevron* is invoked. A reasonable argument could be made that Congress intended to charge Treasury, rather than the Commission, with administering the dimensions of the aptly named Treasury Amendment, which was specifically enacted at the behest of Treasury to confine the CFTC's activities. Cf. *Smiley*, 517 U. S., at 740–741 (explaining that *Chevron* deference arises out of background presumptions of congressional intent); *Martin* v. *Occupational Safety and Health Review Comm'n*, 499 U. S. 144, 157–158 (1991) (allocating power "authoritatively to interpret . . . regulations" after assessing "available indicia of legislative intent"). We need not "resolve the difficult issues regarding deference which would be lurking in other circumstances." *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469, 477 (1992). Because "the statute, as a whole, clearly expresses Congress' intention" to include foreign currency options within the Treasury Amendment's exemption, administrative deference is improper. *Dole* v. *Steelworkers*, 494 U. S. 26, 42 (1990).

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, concurring in part and concurring in the judgment.

I agree with the Court that "the purposes underlying the Treasury Amendment are most properly fulfilled by giving effect to the plain meaning of the language as Congress enacted it," *ante*, at 474, which includes options to buy or sell foreign currency. This principle is contradicted, however, by the Court's extensive discussion of legislative history, see *ante*, at 471, n. 8, 473–474, 478–479, as though that were necessary to confirm the "plain meaning of the language," or (worse) might have power to overcome it. I join all except those portions of the opinion, which achieve nothing useful and sow confusion in the law.

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[15] Brief for Petitioners 23–25; Brief for Crédit Lyonnais et al. as *Amici Curiae* 3; Brief for Foreign Exchange Committee et al. as *Amici Curiae* 6; Brief for CFTC 25.

UNITED STATES *v.* WELLS ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 95–1228. Argued November 4, 1996—Decided February 26, 1997

An indictment charged respondents with, *inter alia,* knowingly making false and "material" statements to a federally insured bank in violation of 18 U. S. C. § 1014. At the trial's end, the District Court instructed the jury, at the Government's behest, that withholding a "material fact" made a statement or representation false and that materiality of an allegedly false statement was for the judge, not the jury, to determine. The jury convicted respondents, the court treated their statements as material, and they appealed. This Court then decided, in *United States* v. *Gaudin,* 515 U. S. 506, that if materiality is an element of § 1001, it is a question for the jury. When the Eighth Circuit requested supplemental briefing on *Gaudin's* applicability in this case, respondents argued that materiality is an element of § 1014 on which they were entitled to a jury's determination; the Government argued, for the first time, that materiality is not an element under § 1014, so that no harm had been done when the trial judge dealt with the issue. The Eighth Circuit agreed with respondents, vacated their convictions and sentences, and remanded the case for a new trial.

Held:

1. Respondents' preliminary arguments do not block this Court from reaching the question on which the writ of certiorari was granted. Although the Government proposed jury instructions to the effect that materiality is an element of § 1014, Federal Rule of Criminal Procedure 30 and the doctrines of "law of the case" and "invited error" do not prevent the Government from taking the contrary position here. Although the indictment charged respondents with submitting material false statements, the "law of the case" doctrine does not prevent the Government from arguing here that materiality is not an element of § 1014. While the Government failed to argue in its initial briefs submitted to the Court of Appeals that materiality is not an element of § 1014, it did so in its supplemental filings, and thus the "invited error" doctrine could not prevent the Government from taking the opposite position here. Pp. 487–489.

2. Materiality of falsehood is not an element of the crime of knowingly making a false statement to a federally insured bank under § 1014. Pp. 489–500.

(a) The falsehood's materiality—*i. e.*, its "natural tendency to influence, or capa[bility] of influencing, the decision of the . . . body to which it was addressed," *Kungys* v. *United States*, 485 U. S. 759, 770—would not be an element of § 1014 under the first criterion in the statutory interpretation hierarchy, a natural reading of the full text, see *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, 542–543. The section's text—which criminalizes "knowingly mak[ing] any false statement or report . . . for the purpose of influencing in any way the action" of a federally insured bank "upon any application, advance, . . . commitment, or loan"—nowhere says that a material fact must be the subject of the false statement or so much as mentions materiality. To the contrary, its terms cover "any" false statement that meets the statute's other requirements, and the term "false statement" carries no general suggestion of influential significance, see, *e. g.*, *Kungys, supra*, at 781. Nor have respondents come close to showing that at common law the term "false statement" acquired any implication of materiality that came with it into § 1014. See, *e. g.*, *Nationwide Mut. Ins. Co.* v. *Darden*, 503 U. S. 318, 322. Finally, statutory history confirms the natural reading of § 1014. When Congress enacted § 1014, it consolidated into one section 3 prior provisions that had included an explicit materiality requirement, and 10 that did not, and Congress enacted other provisions that included express materiality requirements. The most likely inference is that Congress did not intend materiality to be an element of § 1014. *United States* v. *Shabani*, 513 U. S. 10, 13–14. In addition, Congress enacted § 1014 after *Kay* v. *United States*, 303 U. S. 1, which stands in the way of any assumption that Congress might have understood § 1014 to contain an implicit materiality requirement. Pp. 489–495.

(b) Respondents' arguments for affirmance—that Congress has ratified decisions holding materiality to be a § 1014 element by repeatedly amending the statute without rejecting those decisions; that the failure of the 1948 Reviser's Note to § 1014 to mention the section's omission of the materiality element contained in 3 of its 13 predecessor statutes means that Congress must have overlooked the issue; that materiality must be read into the statute to avoid the improbability that Congress intended to impose substantial criminal penalties on relatively trivial or innocent conduct; and that the rule of lenity must be applied here—are unavailing to change the straightforward reading of § 1014. Pp. 495–499.

(c) Since respondents' further arguments—that because the instruction taking materiality from the jury probably left the impression that respondents' statements as alleged were material, the instructions influenced the jury in passing on the falsity and purpose elements; and that because the indictment alleged materiality, any ruling that materiality need not be shown in this case would impermissibly "amend" the indictment contrary to the Fifth Amendment—were neither raised in respondents' briefs before, nor passed on by, the Eighth Circuit, it is left to that court on remand to take up the propriety of raising them now and to address them if warranted. Pp. 499–500.

63 F. 3d 745, vacated and remanded.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, THOMAS, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, *post*, p. 500.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the briefs were *Solicitor General Days, Acting Solicitor General Dellinger, Acting Assistant Attorney General Keeney, Paul A. Engelmayer,* and *William C. Brown.*

James R. Wyrsch argued the cause for respondents. With him on the brief was *Ronald D. Lee.**

JUSTICE SOUTER delivered the opinion of the Court.

The principal issue before us is whether materiality of falsehood is an element of the crime of knowingly making a false statement to a federally insured bank, 18 U. S. C. § 1014. We hold that it is not.

I

In 1993, the Government charged respondents, Jerry Wells and Kenneth Steele, with violating and conspiring to violate the cited statute as officers and part owners of Copytech Systems, Inc., a lessor of office copiers for a monthly fee covering not only use of the equipment but any service that might be required. To raise cash, Copytech sold its interest in the income stream from these contracts to banks.

In Count I of the indictment, the Government charged respondents with conspiring to violate § 1014 by concealing from several banks the true contractual terms.[1] Respondents supposedly conspired to provide the banks with versions of lease contracts purporting to indicate that Copytech's customers were responsible for servicing the equipment when, in fact, secret side agreements placed that responsibility on Copytech at no further cost to the lessees. See App. 24–25; 63 F. 3d 745, 748 (CA8 1995). The Government alleged that respondents concealed the service obligations in order to avoid tying up needed cash in reserve accounts, which the banks might have required Copytech to maintain if they had known of the company's servicing obligations. *Ibid.*

**Bruce S. Rogow* and *Beverly A. Pohl* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging affirmance.

[1] Title 18 U. S. C. § 371 makes it a crime to "conspire . . . to commit any offense against the United States."

In Count II, respondents were charged with violating § 1014 by giving a bank forgeries of respondents' wives' signatures on personal guaranties designed to enable the bank to pursue the wives' assets if Copytech defaulted on any liability to the bank. See App. 21, 30–31; 63 F. 3d, at 748.[2] Each count of the indictment charged respondents with submitting one or more statements that were both false and "material." App. 24, 25, 29, 30–31.

At the end of the trial, the District Court instructed the jury, at the Government's behest, that withholding a "material fact" made a statement or representation false, *id.*, at 41, 42, and defined a material fact as one "that would be important to a reasonable person in deciding whether to engage or not to engage in a particular transaction," *id.*, at 42. Although there was no controversy over the law as stated in these instructions, the Government argued that materiality was for the judge to determine, while respondents said it was an issue for the jury. 63 F. 3d, at 749, nn. 3 and 4. Following Eighth Circuit precedent then prevailing, the District Court agreed with the Government and told the jury that "[t]he materiality of the statement . . . alleged to be false . . . is not a matter with which you are concerned and should not be considered by you in determining the guilt or innocence of the defendant[s]," App. 43. The jury convicted respondents on both counts, the court treated the statements as material, and respondents appealed.

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[2] The Government also charged respondents with three other counts of violating § 1014. The District Court dismissed one count prior to trial and granted judgment of acquittal on the other two. 63 F. 3d, at 748; Brief for Respondents 2; Brief for United States 3, n. 1.

While the appeal was pending, we decided *United States* v. *Gaudin,* 515 U. S. 506 (1995), in which the parties agreed that materiality was an element of 18 U. S. C. § 1001, but disputed whether materiality was a question for the judge or jury, 515 U. S., at 509. Applying the rule that "[t]he Constitution gives a criminal defendant the right to have a jury determine . . . his guilt of every element of the crime with which he is charged," we held that the jury was entitled to pass on the materiality of Gaudin's statements, *id.,* at 522–523. When the Court of Appeals in this case requested supplemental briefing on the applicability of *Gaudin,* respondents argued that under § 1014 materiality is an element on which they were entitled to a jury's determination; the Government argued, for the first time, that materiality is not an element under § 1014, so that no harm had been done when the judge dealt with the issue. The Court of Appeals agreed with respondents, vacated their convictions and sentences, and remanded the case for a new trial. 63 F. 3d, at 749–751.

We granted the Government's petition for certiorari to decide whether materiality of a false statement or report is an element under § 1014.[3] 517 U. S. 1154 (1996). We now vacate and remand.

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[3] Most, but not all, of the Federal Courts of Appeals have held that materiality is an element. Compare *United States* v. *Lopez,* 71 F. 3d 954, 960 (CA1 1995), cert. denied, 518 U. S. 1008 (1996); *United States* v. *Ryan,* 828 F. 2d 1010, 1013, n. 1 (CA3 1987); *United States* v. *Bonnette,* 663 F. 2d 495, 497 (CA4 1981), cert. denied, 455 U. S. 951 (1982); *United States* v. *Thompson,* 811 F. 2d 841, 844 (CA5 1987); *United States* v. *Spears,* 49 F. 3d 1136, 1141 (CA6 1995); *United States* v. *Staniforth,* 971 F. 2d 1355, 1358 (CA7 1992); *Theron* v. *United States Marshal,* 832 F. 2d 492, 496–497 (CA9 1987), cert. denied, 486 U. S. 1059 (1988); *United States* v. *Haddock,* 956 F. 2d 1534, 1549 (CA10), cert. denied, 506 U. S. 828 (1992); *United States* v. *Rapp,* 871 F. 2d 957, 964 (CA11), cert. denied *sub nom. Bazarian* v.

II

We first address respondents' efforts to block us from reaching the question on which we granted certiorari. Given the Government's proposal for jury instructions to the effect that materiality is an element under § 1014, respondents argue that Federal Rule of Criminal Procedure 30 and the doctrines of "law of the case" and "invited error" each bar the Government from taking the position here that materiality is not an element. None of these reasons stands in our way to reaching the merits.

Rule 30 (applicable in this Court, see Fed. Rules Crim. Proc. 1, 54(a)) provides that "[n]o party may assign as error any portion of the charge [given to the jury] . . . unless that party objects thereto before the jury retires to consider its verdict." But the Government is not challenging the jury instruction in an effort to impute error to the trial court; it is merely arguing that the instruction it proposed was harmless surplusage insofar as it was directed to the jury.

As for the two doctrines, respondents are correct that several Courts of Appeals have ruled that when the Government accepts jury instructions treating a fact as an element of an offense, the "law of the case" doctrine precludes the Government from denying on appeal that the crime includes the element. See *United States* v. *Killip*, 819 F. 2d 1542, 1547–1548 (CA10), cert. denied *sub nom. Krout* v. *United States*, 484 U. S. 987 (1987); *United States* v. *Tapio*, 634 F. 2d 1092, 1094 (CA8 1980); *United States* v. *Spletzer*, 535 F. 2d 950, 954 (CA5 1976).[4] They are also correct that Courts of

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United States, 493 U. S. 890 (1989) (all holding materiality to be an element of § 1014), with *United States* v. *Cleary*, 565 F. 2d 43, 46 (CA2 1977) (concluding that materiality is not an element), cert. denied *sub nom. Passarelli* v. *United States*, 435 U. S. 915 (1978).

[4] In this context, the "law of the case" doctrine is something of a misnomer. It does not counsel a court to abide by its own prior decision in a given case, but goes rather to an appellate court's relationship to the court of trial. See 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4478 (1981).

Appeals have stated more broadly under the "invited error" doctrine "'that a party may not complain on appeal of errors that he himself invited or provoked the [district] court . . . to commit.'" *United States* v. *Sharpe,* 996 F. 2d 125, 129 (CA6) (quoting *Harvis* v. *Roadway Express, Inc.,* 923 F. 2d 59, 60 (CA6 1991)), cert. denied, 510 U. S. 951 (1993). But however valuable these doctrines may be in controlling the party who wishes to change its position on the way from the district court to the court of appeals, they cannot dispositively oust this Court's traditional rule that we may address a question properly presented in a petition for certiorari if it was "pressed [in] or passed on" by the Court of Appeals, *United States* v. *Williams,* 504 U. S. 36, 42 (1992) (internal quotation marks and emphasis omitted). Accordingly, we have treated an inconsistency between a party's request for a jury instruction and its position before this Court as just one of several considerations bearing on whether to decide a question on which we granted certiorari.[5] See *Springfield* v. *Kibbe,* 480 U. S. 257, 259–260 (1987) *(per curiam).*[6] Here, it seems sensible to reach the question presented.

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[5] Respondents offer variations on their "law of the case" and "invited error" doctrines. In addition to arguing that the "law of the case" doctrine holds the Government to the position it took on the jury instructions, respondents contend this doctrine holds the Government to the position it adopted in the indictment. See Brief for Respondents 14–16 (citing *United States* v. *Norberg,* 612 F. 2d 1 (CA1 1979)). For the reasons set forth in the text, this latter version of the doctrine does not stand in our way to reaching the question presented.

Along with arguing that the Government "invited error" in the District Court by proposing its jury instructions, respondents claim that the Government invited error in the Court of Appeals by failing to argue that materiality is not an element of § 1014 in its initial brief to that court. This claim is wrong. After the Court of Appeals requested supplemental briefing, the Government argued that materiality is not an element of § 1014 and therefore hardly "invited" that court's contrary ruling.

[6] In *Springfield* v. *Kibbe,* 480 U. S., at 259, the Court dismissed the writ of certiorari on prudential grounds in part because the petitioner there, like the Government here, sought "to revers[e] a judgment because of

The question of materiality as an element was raised before the Court of Appeals, ruled on there, clearly set forth in the certiorari petition, fully briefed, and argued. Nor would reaching the issue excuse inattention or reward cunning. For some time before respondents' trial in 1993, the Eighth Circuit had assumed that the Government was bound to prove a false statement's materiality as an element under § 1014, see 63 F. 3d, at 750–751; *United States* v. *Ribaste,* 905 F. 2d 1140, 1143 (1990); *United States* v. *McKnight,* 771 F. 2d 388, 389 (1985), and had treated this issue as one for the judge, not the jury, see *United States* v. *Ribaste, supra,* at 1143. Since the Government was confident that it had evidence of materiality to satisfy the Circuit rule, it had no reason not to address the element when it drafted the indictment and its proposed jury instructions. When *Gaudin* rendered it reversible error to assign a required materiality ruling to the court, the Government suddenly had reason to contest the requirement to show materiality at all. Nothing the Government has done disqualifies it from the chance to make its position good in this Court.

III

We accordingly consider whether materiality of falsehood is an element under § 1014, understanding the term in question to mean "ha[ving] a natural tendency to influence, or [being] capable of influencing, the decision of the decisionmaking body to which it was addressed," *Kungys* v. *United States,* 485 U. S. 759, 770 (1988) (internal quotation marks

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[jury] instructions that petitioner accepted, and indeed itself requested." In contrast to the case at hand, however, the petitioner in *Kibbe* had not, in the Court of Appeals, raised an issue critical to resolving the question presented in its petition for a writ of certiorari, the Court of Appeals had not considered that related issue, and the petitioner had not explicitly raised that related issue in its certiorari petition, *id.,* at 258–260. See also *United States* v. *Williams,* 504 U. S. 36, 43, n. 3 (1992) (discussing *Kibbe*).

omitted); see also *United States* v. *Gaudin,* 515 U. S., at 509.[7] We begin with the text. See *Community for Creative Non-Violence* v. *Reid,* 490 U. S. 730, 739 (1989). Section 1014 criminalizes "knowingly mak[ing] any false statement or report . . . for the purpose of influencing in any way the action" of a Federal Deposit Insurance Corporation (FDIC) insured bank "upon any application, advance, . . . commitment, or loan." 18 U. S. C. § 1014. Nowhere does it further say that a material fact must be the subject of the false statement or so much as mention materiality.[8] To the contrary, its terms cover "any" false statement that meets the other requirements in the statute, and the term "false statement" carries no general suggestion of influential significance, see *Kungys* v. *United States, supra,* at 781; cf. *Kay* v. *United States,* 303 U. S. 1, 5–6 (1938). Thus, under the first criterion in the interpretive hierarchy, a natural reading of the full text, see *United States* v. *American Trucking Assns., Inc.,* 310 U. S. 534, 542–543 (1940), materiality would not be an element of § 1014.[9]

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[7] The Court of Appeals here also appears to have understood materiality to have this meaning. See 63 F. 3d, at 750 (relying on *United States* v. *Adler,* 623 F. 2d 1287, 1291 (CA8 1980), which defined "materiality" as having "a natural tendency to influence or [being] capable of influencing" an entity's decision (internal quotation marks omitted)).

[8] The pertinent text of § 1014 is: "Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of . . . any institution the accounts of which are insured by the Federal Deposit Insurance Corporation . . . , upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both."

[9] JUSTICE STEVENS argues that the four criminal acts other than "false statement" listed in § 1014 would in fact involve material misstatements, and that it follows on the theories of *ejusdem generis* and *noscitur a sociis* that false statements must also be shown to be material. *Post,* at 510–

Nor have respondents come close to showing that at common law the term "false statement" acquired any implication of materiality that came with it into § 1014. We do, of course, presume that Congress incorporates the common-law meaning of the terms it uses if those " 'terms . . . have accumulated settled meaning under . . . the common law' " and " 'the statute [does not] otherwise dictat[e],' " *Nationwide Mut. Ins. Co.* v. *Darden*, 503 U. S. 318, 322 (1992) (quoting *Community for Creative Non-Violence* v. *Reid*, *supra*, at 739). Respondents here, however, make no claims about the settled meaning of "false statement" at common law; they merely note that some common-law crimes involving false statements, such as perjury, required proof of materiality. See Brief for Respondents 23–24. But Congress did not codify the crime of perjury or comparable common-law crimes in § 1014; as we discuss next, it simply consolidated 13 statutory provisions relating to financial institutions, and, in fact, it enacted a separate general perjury provision at 18 U. S. C. § 1621, see 62 Stat. 773.[10]

511, n. 12. But this does not follow. The question is not whether the specified categories of statements will almost certainly be material statements in point of fact; like false statements made for the purpose of influencing a lender, the four other criminal acts will virtually always involve material misstatements. The question, however, is whether materiality must be proven as a separate element, and on that question a list of criminal acts, none of which is expressly described as "material," is no premise for the dissent's conclusion under the *ejusdem generis* and *noscitur a sociis* canons.

[10] Nor does *Fedorenko* v. *United States*, 449 U. S. 490 (1981), help respondents here. In *Fedorenko*, we agreed with the Government that, even though the phrase "willfully make a misrepresentation" in § 10 of the Displaced Persons Act, 62 Stat. 1013, did not use the term "material," it nonetheless applied only to willful misrepresentations about "material" facts, 449 U. S., at 507–508, and n. 28. The dissent argues we should reach a similar conclusion here, because *Kungys* v. *United States*, 485 U. S. 759, 781 (1988), made it clear that "misrepresentation" and "false statement" were on par at common law. *Post*, at 504, and n. 6. But the passage from *Kungys* quoted by the dissent addressed the historic meaning of the

Statutory history confirms the natural reading. When Congress originally enacted § 1014 as part of its recodification of the federal criminal code in 1948, 62 Stat. 752, it explicitly included materiality in other provisions involving false representations.[11] Even more significantly, of the 13 provisions brought together by § 1014, 10 had previously contained no express materiality provision and received none in the recodification,[12] while 3 of the 13 had contained express

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term "material," see 485 U. S., at 769, not the common-law meaning of "misrepresentation" or "false statement." Although *Kungys* supports the view that "materiality" has the same meaning in criminal statutes that prohibit falsehoods to public officials, whether the statutes refer to misrepresentations, see *id.*, at 772–776, or to some form of false statements, see *id.*, at 779–782, that does not mean that "misrepresentation" and "false statement" are identical in carrying an implicit requirement of materiality. Indeed, *Kungys* distinguished between the common-law meaning of "misrepresentation" and "false testimony," concluding that while the former had been held to carry a materiality requirement in many contexts, the terms "false" or "falsity" did not as frequently carry such an implication. *Id.*, at 781.

More fundamentally, we disagree with our colleague's apparent view that any term that is an element of a common-law crime carries with it every other aspect of that common-law crime when the term is used in a statute. JUSTICE STEVENS seems to assume that because "false statement" is an element of perjury, and perjury criminalizes only material statements, a statute criminalizing "false statements" covers only material statements. See *post*, at 504. By a parity of reasoning, because common-law perjury involved statements under oath, a statute criminalizing a false statement would reach only statements under oath. It is impossible to believe that Congress intended to impose such restrictions *sub silentio*, however, and so our rule on imputing common-law meaning to statutory terms does not sweep so broadly.

[11] See 18 U. S. C. § 1621, 62 Stat. 773 (entitled "Perjury generally," and prohibiting statements under oath regarding "any material matter which [one] does not believe to be true"); 18 U. S. C. § 1001, 62 Stat. 749 (entitled "Statements or entries generally," and prohibiting, *inter alia*, "knowingly and willfully falsif[ying] . . . a material fact").

[12] See 7 U. S. C. § 1514(a) (1946 ed.) ("mak[ing] any statement knowing it to be false . . . for the purpose of influencing"); 12 U. S. C. § 981 (1946 ed.) ("knowingly mak[ing] any false statement in an application for [a] loan");

materiality requirements and lost them in the course of consolidation.[13] See *Williams* v. *United States*, 458 U. S. 279, 288 (1982). The most likely inference in these circumstances is that Congress deliberately dropped the term "materiality" without intending materiality to be an element of § 1014. See *United States* v. *Shabani*, 513 U. S. 10, 13–14 (1994).[14]

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12 U. S. C. § 1122 (1946 ed.) ("mak[ing] any statement, knowing it to be false, for the purpose of obtaining . . . any advance"); § 1123 (1946 ed.) ("willfully overvalu[ing] any property offered as security"); 12 U. S. C. § 1248 (1946 ed.) ("mak[ing] any statement . . . knowing the same to be false"); 12 U. S. C. § 1312 (1946 ed.) ("mak[ing] any statement, knowing it to be false, for the purpose of obtaining"); 12 U. S. C. § 1313 (1946 ed.) ("willfully overvalu[ing] any property offered as security"); 12 U. S. C. § 1441(a) (1946 ed.) ("mak[ing] any statement, knowing it to be false, . . . for the purpose of influencing"); 12 U. S. C. § 1467(a) (1946 ed.) ("mak[ing] any statement, knowing it to be false, . . . for the purpose of influencing"); 15 U. S. C. § 616(a) (1946 ed.) ("mak[ing] any statement knowing it to be false . . . for the purpose of obtaining . . . or for the purpose of influencing").

[13] See 7 U. S. C. § 1026(a) (1946 ed.) (making a "material representation"); 12 U. S. C. § 596 (1946 ed.) (making a "material statement"); and 12 U. S. C. § 1138d(a) (1946 ed.) (making a "material representation").

[14] JUSTICE STEVENS suggests that because he can discern no meaningful difference between the subject matter and penalties involved in the 42 sections of the United States Code criminalizing false statements that expressly include a materiality requirement, and the 54 sections criminalizing false statements that lack an express materiality requirement, we must infer that Congress intended all of the sections to include a materiality element. See *post*, at 505–509. In other words, Congress must have thought that including materiality in 42 statutes was surplusage. This, of course, is contrary to our presumption that each term in a criminal statute carries meaning. See *Bailey* v. *United States*, 516 U. S. 137, 145 (1995). Moreover, the dissent's approach to statutory interpretation leads to remarkable results. The statutes cited by the dissent contain a variety of different requirements; for example, some criminalize statements only if they were made with a particular intent, see, *e. g.*, 18 U. S. C. § 1919; 33 U. S. C. § 931, while others do not, see, *e. g.*, 7 U. S. C. § 13(a)(3); 7 U. S. C. § 6407(e). Under our colleague's reasoning, unless a court could readily discern a meaningful difference between these two categories of statutes, apart from the language used, it should import the *mens rea* requirements expressly appearing in some sections to those that lack them.

While 2 of the 3 offenses from which the express materiality requirement was dropped used the term "representation," see n. 12, *supra*, and thus could have included a materiality element implicitly, see *Kungys* v. *United States*, 485 U. S., at 781 (noting that "misrepresentation" had been held to imply materiality), the remaining 11 would not have, as was clear from the opinion of the Court in *Kay* v. *United States*, 303 U. S. 1 (1938). *Kay* had construed 1 of the 10 statutes that were later mirrored in the language of § 1014;[15] when the petitioner claimed that the statements she had made could not "endanger or directly influence any loan made by" the decisionmaker, *id.*, at 5, we thought her arguments unimpressive, *ibid.*, and explained:

> "It does not lie with one knowingly making false statements with intent to mislead the officials of the Corporation to say that the statements were not influential or the information not important. There can be no question that Congress was entitled to require that the information be given in good faith and not falsely with intent to mislead. Whether or not the Corporation would act

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[15] Compare § 8(a) of the Home Owners' Loan Act, 48 Stat. 134 (providing that "[w]hoever makes any statement, knowing it to be false, or whoever willfully overvalues any security, for the purpose of influencing in any way the action of the Home Owners' Loan Corporation or the Board or an association upon any application, advance, discount, purchase, or repurchase agreement, or loan, under this Act, or any extension thereof by renewal deferment, or action or otherwise, or the acceptance, release, or substitution of security therefor, shall be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or both"), with § 1014 as enacted in 1948, 62 Stat. 752 (providing that "[w]hoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of [enumerated institutions] upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $5,000 or imprisoned not more than two years, or both").

> favorably on the loan is not a matter which concerns one seeking to deceive by false information. The case is not one of an action for damages but of criminal liability and actual damage is not an ingredient of the offense." *Id.*, at 5–6.[16]

Although some courts have read *Kay* as holding only that there is no need for the Government to prove that false statements actually influenced the decisionmaker, see, *e. g.*, *United States* v. *Goberman,* 458 F. 2d 226, 229 (CA3 1972), the opinion speaks of the importance of the statements as well as their efficacy, and no one reading *Kay* could reasonably have assumed that criminal falsity presupposed materiality. Since we presume that Congress expects its statutes to be read in conformity with this Court's precedents, see, *e. g.*, *North Star Steel Co.* v. *Thomas,* 515 U. S. 29, 34 (1995), and since the relevant language of the statute in *Kay* was substantially like that in § 1014, *Kay* stands in the way of any assumption that Congress might have understood an express materiality provision to be redundant.

Respondents' remaining arguments for affirmance are unavailing. They contend that Congress has ratified holdings of some of the Courts of Appeals that materiality is an element of § 1014 by repeatedly amending the statute without rejecting those decisions. But the significance of subsequent congressional action or inaction necessarily varies with the circumstances, and finding any interpretive help in congressional behavior here is impossible. Since 1948, Congress has amended § 1014 to modify the list of covered institutions and to increase the maximum penalty,[17] but without ever touching the original phraseology criminalizing "false statement[s]" made "for the purpose of influencing" the actions of the enumerated institutions. We thus have at most legislative silence on the crucial statutory language, and we have "frequently cautioned that '[i]t is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law,'" *NLRB* v. *Plasterers*, 404 U. S. 116, 129–130 (1971) (quoting *Girouard* v. *United States*, 328 U. S. 61, 69 (1946)). But even if silence could speak, it could not speak unequivocally to the issue here, since over the years judicial opinion has divided on whether § 1014 includes a materiality element, see n. 3, *supra*, and we have previously described the elements of § 1014 without any mention of materiality, see *Williams* v. *United States*, 458 U. S., at 284. It would thus be impossible to say which view Congress might have endorsed. See *Fogerty* v. *Fantasy, Inc.*, 510 U. S. 517, 527–532 (1994).[18]

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[16] We ultimately did not uphold the conviction in *Kay,* 303 U. S., at 9–10, but vacated the lower court's judgment so that it would be free to address a separate issue relating to the indictment.

[17] See Pub. L. 91–609, § 915, 84 Stat. 1815 (adding FDIC-insured banks to the list of covered institutions); Pub. L. 101–73, § 961(h), 103 Stat. 500 (increasing the maximum punishment from its 1948 level of a $5,000 fine and two years' imprisonment to $1,000,000 and 20 years' imprisonment);

Respondents also rely on the 1948 Reviser's Note to § 1014, which discussed the consolidation of the 13 provisions into one, and explained that, apart from two changes not relevant here,[19] the consolidation "was without change of substance,"

Pub. L. 101–647, § 2504(g), 104 Stat. 4861 (increasing the maximum prison term to 30 years).

[18] If we were to rely on legislative history, the reports would be of no help to respondents. See H. R. Rep. No. 91–1556, pp. 70–71 (1970) (addressing the amendment adding FDIC-insured institutions, describing the statute as "provid[ing] penalties for making false statements or reports in connection with loans or similar transactions"); H. R. Rep. No. 101–54, pt. 1, p. 400 (1989) (on the amendment increasing the maximum prison term to 20 years and a $1,000,000 fine, describing § 1014 as "deal[ing] with false statements in loan and credit applications"); H. R. Rep. No. 101–681, pt. 1, p. 175 (1990) (on the amendment increasing the maximum prison term to 30 years, describing § 1014 as "relating to fraudulent loan or credit applications").

[19] The two substantive changes were: the adoption of a single punishment, which was identical to the punishment set forth in the majority of the predecessor statutes; and the enumeration of a uniform definition of the types of transactions covered by the statute, which was a newly

Historical and Revision Notes following § 1014, 18 U. S. C., p. 247. Respondents say that the revisers' failure to mention the omission of materiality from the text of § 1014 means that Congress must have "completely overlooked" the issue. Brief for Respondents 29–30. But surely this indication that the "staff of experts" who prepared the legislation, *Muniz* v. *Hoffman*, 422 U. S. 454, 470, n. 10 (1975), either overlooked or chose to say nothing about changing the language of three of the former statutes does nothing to muddy the ostensibly unambiguous provision of the statute as enacted by Congress, cf. *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U. S. 102, 108 (1980) ("Absent a clearly expressed legislative intention to the contrary, [statutory] language must ordinarily be regarded as conclusive"). In any event, the revisers' assumption that the consolidation made no substantive change was simply wrong. As respondents candidly conceded at oral argument, they failed to discover a single case holding that any of the predecessor statutes lacking a materiality requirement implicitly contained one, and after our decision in *Kay* v. *United States*, 303 U. S. 1 (1938), Congress could not have assumed that a materiality element was implicit in a comparable statute that was silent on the issue, see *supra*, at 494–495. Dropping the materiality element from the three statutes could not, then, reasonably have been seen as making no change. Those who write revisers' notes have proven fallible before. See *State Farm Fire & Casualty Co.* v. *Tashire*, 386 U. S. 523, 532, n. 11 (1967).[20]

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phrased "composite" of the then-existing terms. See Historical and Revision Notes following § 1014, 18 U. S. C., p. 247.

[20] The dissent contends that, because *McClanahan* v. *United States*, 12 F. 2d 263, 264 (CA7 1926), and *United States* v. *Kreidler*, 11 F. Supp. 402, 403 (SD Iowa 1935), "held or assumed that" two statutes without an explicit materiality requirement nonetheless carried an implicit one, the revisers likely assumed that all of the statutes consolidated in § 1014 contained a materiality requirement. *Post*, at 502–503. Neither case, however, held that one of § 1014's predecessor statutes contained a materiality

Respondents next urge that we follow the reasoning of some Courts of Appeals in reading materiality into the statute to avoid the improbability that Congress intended to impose substantial criminal penalties on relatively trivial or innocent conduct. See 63 F. 3d, at 751; *United States* v. *Williams,* 12 F. 3d 452, 458 (CA5 1994); *United States* v. *Staniforth,* 971 F. 2d 1355, 1358 (CA7 1992). But we think there is no clear call to take such a course. It is true that we have held § 1014 inapplicable to depositing false checks at a bank, in part because we thought that it would have "ma[d]e a surprisingly broad range of unremarkable conduct a violation of federal law," *Williams* v. *United States,* 458 U. S., at 286–287, n. 8, and elsewhere thought it possible to construe a prohibition narrowly where a loose *mens rea* requirement would otherwise have resulted in a surprisingly broad statutory sweep, see *United States* v. *X-Citement Video, Inc.,* 513 U. S. 64, 71–72 (1994). But an unqualified

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requirement. In *Kreidler,* the defendant challenged his indictment under § 8(a) of the Home Owners' Loan Act (the same provision at issue two years later in *Kay,* see n. 14, *supra*), arguing that a statement "must be material and calculated to deceive," *Kreidler,* 11 F. Supp., at 403. The District Court simply "assume[d]" the statement "must be relevant and material," and then found that the indictment satisfied those requirements. *Id.,* at 403–404. The question in *McClanahan* was whether the defendant's prosecution under § 31 of the Federal Farm Loan Act of 1916, 39 Stat. 382, 12 U. S. C. § 981 (1946 ed.), was beyond Congress's constitutional power because the statute did "not limit the [punishable] statement to such as relate or are material to the proposed loan." 12 F. 2d, at 263. The court upheld the constitutionality of the statute. While stating that it "would in all probability be concluded" that "wholly frivolous and unrelated" false statements made in a loan application "did not supply the basis for a prosecution under section 31," the court made it clear that this was dicta, because it explained in the very next sentence that "there [was] no question of the relevancy of the alleged false statements knowingly made" in the case before it. *Id.,* at 264. In determining what the revisers might have thought the words of § 1014 meant, we think it far more likely that they would have relied on the clear implication of our 1938 decision in *Kay* v. *United States,* 303 U. S. 1, rather than on the dicta from two earlier District or Appeals Court cases.

reading of § 1014 poses no risk of criminalizing so much conduct as to suggest that Congress meant something short of the straightforward reading. The language makes a false statement to one of the enumerated financial institutions a crime only if the speaker knows the falsity of what he says and intends it to influence the institution. A statement made "for the purpose of influencing" a bank will not usually be about something a banker would regard as trivial, and "it will be relatively rare that the Government will be able to prove that" a false statement "was . . . made with the subjective intent" of influencing a decision unless it could first prove that the statement has "the natural tendency to influence the decision," *Kungys* v. *United States*, 485 U. S., at 780–781. Hence the literal reading of the statute will not normally take the scope of § 1014 beyond the limit that a materiality requirement would impose.

Finally, the rule of lenity is no help to respondents here. "The rule of lenity applies only if, 'after seizing everything from which aid can be derived,' . . . we can make 'no more than a guess as to what Congress intended.'" *Reno* v. *Koray*, 515 U. S. 50, 65 (1995) (quoting *Smith* v. *United States*, 508 U. S. 223, 239 (1993), and *Ladner* v. *United States*, 358 U. S. 169, 178 (1958)). Read straightforwardly, § 1014 reveals no ambiguity, its *mens rea* requirements narrow the sweep of the statute, and this is not a case of guesswork reaching out for lenity.

IV

Respondents advance two further reasons to affirm the Court of Appeals's judgment, even on the assumption that materiality is not an element. According to respondents, the trial judge's instruction that "[t]he materiality of the statement . . . alleged to be false . . . is not a matter with which you are concerned and should not be considered by you in determining the guilt or innocence of the defendant[s]," App. 43, probably left the jurors with the impression that the statements as alleged would have been material, and that impression could have improperly influenced the jury in passing on the elements of falsity and purpose. Respondents also suggest that because the indictment alleged materiality, any ruling that materiality need not be shown in this case would impermissibly "amend" the indictment contrary to the Fifth Amendment's requirement that "[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." U. S. Const., Amdt. 5. Since respondents failed to raise either of these issues in their briefs before the Court of Appeals and that court did not pass on these questions, we leave it to the Court of Appeals on remand to take up the propriety of raising these issues now and to address them if warranted.

The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, dissenting.

Violation of 18 U. S. C. § 1014 is a crime punishable by up to 30 years in prison, a fine of up to $1,000,000, "or both." I am convinced that Congress did not intend this draconian statute to apply to immaterial falsehoods, even when made for the purpose of currying favor with a bank's loan officer. The Court's contrary conclusion relies heavily on three dubious assumptions: (1) that our decision in *Kay* v. *United States*, 303 U. S. 1 (1938), speaks to the issue in this case; (2) that the revisers of § 1014 erred in advising us that their 1948 consolidation of 13 earlier statutes did not change the law; and (3) that flattery of bank officers is uncommon. I disagree with each of those assumptions.

I

Our opinion in *Kay*, on which the majority relies, does not address the issue in this case. It does, however, illuminate the problems with the Court's holding today. Ms. Kay was convicted of making false statements under the Home Owners' Loan Act, 12 U. S. C. §§ 1467(a) and (e) (1940 ed.). 303 U. S., at 3–4. She had falsely stated that the amount of the claims she presented for settlement was two to four times their actual value. *Id.*, at 5. Among the challenges that Kay pressed before this Court was an argument that she could not be convicted under § 1467(a) because the Government produced no evidence that her false statement had any effect on the actions of the Home Owners' Loan Corporation. *Ibid.* In rightly rejecting this argument, this Court reasoned:

> "Whether or not the Corporation would act favorably on the loan is not a matter which concerns one seeking to deceive by false information. The case is not one of an action for damages but of criminal liability, and actual damage is not an ingredient of the offense." *Id.*, at 6.

There is a clear distinction between the concept of *materiality*—whether the information provided *could* have played a proper role in the loan approval process—and the concept of *reliance*—whether the information *did* play a role in the process. Kay could not plausibly have contended that her false statement was immaterial. Certainly a misrepresentation regarding the proposed amount of settlement was relevant and could have affected the Corporation's decision. Instead, she argued that the charge was insufficient because it did not allege that the application had been approved, *i. e.*, that her material false statement had played a causal role. The Court, quite properly, rejected that argument because the crime was complete when the material false statement was made. Since the materiality of the statement was not disputed, the Court had no occasion to address the question presented by this case.

The difference between the issue in *Kay* and the issue in this case does, however, illustrate the importance of the Court's holding today. Conceivably a prohibition against making intentional false statements might encompass four different categories: (1) all lies, including idle conversation;

(2) all lies intended to encourage a favorable response, including mere flattery; (3) all material misstatements; or (4) only those material misstatements that are relied upon by the deceived decisionmaker. *Kay* held that the coverage of one of the predecessor statutes that became § 1014 is broader than the fourth category. In my opinion, § 1014 embraces only the third category. The Court, however, concludes that it encompasses all of the second category, which I call the "flattery category" even though that label does not adequately describe its breadth. As now construed, § 1014 covers false explanations for arriving late at a meeting, false assurances that an applicant does not mind if the loan officer lights up a cigar, false expressions of enthusiasm about the results of a football game or an election, as well as false compliments about the subject of a family photograph. So long as the false statement is made "for the purpose of influencing" a bank officer, it violates § 1014. *Ante,* at 499.

II

The history of § 1014 also refutes the Court's interpretation of that statute. Prior to the 1948 codification, three of the statutes that became a part of § 1014 included an express materiality requirement. The others did not. The Reviser's Note states that the amalgamation of these 13 statutes made no "change of substance" in the law.[1] The majority, today interpreting § 1014 as making a substantial change in the law, concludes that the reviser was "simply wrong." *Ante,* at 497.

A more plausible explanation shows that the reviser was, in fact, correct. Prior to the 1948 codification, no federal court appears to have held that any of § 1014's predecessor statutes encompassed immaterial statements. At least two cases, however, had held or assumed that the nonexplicit statutes did contain a materiality requirement. See *McClanahan* v. *United States,* 12 F. 2d 263, 264 (CA7

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[1] Historical and Revision Notes following § 1014, 18 U. S. C., p. 247.

1926);[2] *United States* v. *Kreidler,* 11 F. Supp. 402, 403 (SD Iowa 1935).[3] Given these federal cases and the absence of any common-law precedent for punishing immaterial false statements, it is far more likely that the revisers assumed that all of these statutes included the common-law requirement of materiality than that congressional silence was intended to make a dramatic change in the law.[4] In my judgment, the fact that the materiality element had been expressly included in some of the predecessor statutes, and only implicitly included in the others, explains why the Reviser's Note could accurately state that the omission of the express reference to materiality was not a "change of substance."[5]

At least three additional reasons support the conclusion that the revisers correctly assumed that all of the federal statutes criminalizing false statements included a materiality requirement that was sometimes implicit and sometimes explicit. First, contrary to the Court's assertion, crimes involving "false statements" have a common-law heritage that includes an assumption of a materiality requirement. This conclusion is consistent with our prior holding that the term "misrepresentation" in § 10 of the Displaced Persons Act of 1948, 62 Stat. 1013, implicitly contained a materiality requirement. See *Fedorenko* v. *United States,* 449 U. S. 490, 507–508, and n. 28 (1981). Today the Court discounts the significance of that holding because it assumes that at common law there was a critical difference between a "misrepresentation" and a "false statement." *Ante,* at 491–492, n. 10. However, *Kungys* v. *United States,* 485 U. S. 759 (1988), from which the Court draws this inference, made it perfectly clear that "false statements" share a common-law ancestry with "misrepresentations."[6] At common law, neither term included immaterial falsehoods such as mere flattery.[7]

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[2] "If the false statements charged and proved were wholly frivolous and unrelated, it would in all probability be concluded that they did not supply the basis for a prosecution under [the Act]."

[3] "We may assume that a statement . . . not likely to influence one exercising common prudence and caution, would not support the charge. . . . [I]t must be relevant and material."

[4] The Court argues that these cases are not persuasive because they did not *hold* that the relevant predecessor statutes to § 1014 contained a materiality requirement. *Ante,* at 497–498, n. 20. Even if this is true, the fact remains that the only reported cases to address this issue stated that these statutes did contain a materiality requirement. The natural inference is that the prevailing view at the time, and therefore the prevailing view of the Congress that enacted § 1014, was that all "false statements" had to be material to result in criminal penalties. Instead of these cases, the Court asserts, Congress "likely . . . relied on the clear implication of our 1938 decision in *Kay* v. *United States,* 303 U. S. 1." *Ante,* at 498, n. 20. It is difficult to see how Congress could have relied on this "clear implication" when the opinion does not in any way address materiality, but instead holds that *reliance* is not a requirement of § 1014. See *United States* v. *Goberman,* 458 F. 2d 226, 229 (CA3 1972); *United States* v. *Kernodle,* 367 F. Supp. 844, 851–852 (MDNC 1973).

[5] Historical and Revision Notes following § 1014, 18 U. S. C., p. 247.

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[6] "The term 'material' in § 1451(a) is not a hapax legomenon. Its use in the context of *false statements* to public officials goes back as far as Lord Coke, who defined the crime of perjury as follows:

"'Perjury is a crime committed, when a lawful oath is ministred by any that hath authority, to any person, in any judicial proceeding, who sweareth absolutely, and falsly in a manner material to the issue, or cause in question, by their own act, or by the subornation of others.' 3 E. Coke, Institutes 164 (6th ed. 1680).

"Blackstone used the same term, explaining that in order to constitute 'the crime of wilful and corrupt *perjury*' the *false statement* 'must be in some point material to the question in dispute; for if it only be in some trifling collateral circumstance, to which no regard is paid,' it is not punishable. 4 W. Blackstone, Commentaries *137. See also 1 W. Hawkins, Pleas of the Crown, ch. 27, § 8, p. 433 (Curwood ed. 1824). Given these common-law antecedents, it is unsurprising that a number of federal statutes criminalizing *false statements* to public officials use the term 'material.'" 485 U. S., at 769 (some emphases added).

See also Saks, *United States v. Gaudin:* A Decision with Material Impact, 64 Ford. L. Rev. 1157, 1163–1166 (1995) (tracing § 1001 and other federal false statement statutes back to the common law).

[7] Contrary to the Court's assertion, *ante,* at 491–492, n. 10, I do not assume that when Congress criminalizes an element of a common-law crime, the federal offense carries with it every other element of the

Second, at least 100 federal false statement statutes may be found in the United States Code. About 42 of them contain an express materiality requirement; approximately 54 do not.[8] The kinds of false statements found in the first category[9] are, to my eyes at least, indistinguishable from those

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common-law crime. I do presume, however, that when Congress criminalizes an element of a common-law crime, it intends that element to have the same meaning it had at common law.

[8] Judge Kozinski catalogued these statutes in his dissenting opinion in *United States* v. *Gaudin*, 28 F. 3d 943, 959–960, nn. 3 and 4 (CA9 1994). He made the assumption (which I share) that a materiality requirement "is probably implied" in every one of these statutes that does not contain such an express requirement. *Id.*, at 959.

[9] See *id.*, at 959, n. 3 ("7 U. S. C. § 13(a)(3) (felony to knowingly make statement that 'was false or misleading with respect to any material fact' in report required by statute or futures association); 8 U. S. C. § 1160(b)(7) (penalizing knowing and willful false statement of material fact in application for status of special agricultural worker); 8 U. S. C. § 1225a(c)(6) (penalizing knowing and willful false statement of material fact in application for special status by virtue of entering U. S. before Jan. 1, 1982); 8 U. S. C. § 1325(a) (penalizing improper entry into U. S. by virtue of willful false statement of material fact); 10 U. S. C. § 931 (perjury in military proceeding); 18 U. S. C. § 152 (maximum five year sentence for knowing and fraudulent receipt of material amount of property with intent to defeat bankruptcy code); 18 U. S. C. § 542 (maximum prison term of two years for entry of goods by means of material false statement); 18 U. S. C. § 1919 (maximum one year prison term for false statement of material fact knowingly made to obtain unemployment compensation for federal service); 19 U. S. C. § 1629(f)(2) (maximum five year prison term for any person who knowingly and willfully covers up a material fact from customs official); 19 U. S. C. § 1919 (maximum two year prison term for knowingly making false statement of material fact with intent to influence tariff adjustment); 19 U. S. C. § 2316 (maximum one year prison term for knowingly making false statement of material fact when seeking relief from injury under section 2311); 19 U. S. C. § 2349 (maximum two year prison term for making false statement of material fact for purposes of obtaining relief from injury under Trade Act of 1974); 20 U. S. C. § 1097(b) (maximum one year prison term for knowingly and willfully concealing material information in connection with assignment of federally insured student loan); 20 U. S. C. § 4442(c)(1) (maximum one year prison term for knowingly making false statement of material fact in seeking cultural and art development grants);

in the second category.[10] Nor is there any obvious distinction between the range of punishments authorized by the two different groups of statutes. Moreover, some statutes,

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22 U. S. C. § 618(a)(2) (maximum six month prison term for willfully making false statement of material fact in registering to distribute political propaganda); 22 U. S. C. § 2778(c) (maximum 10 year prison term for willfully making untrue statement of material fact in report required for control of arms exports and imports); 26 U. S. C. § 7206(1) (maximum three year prison term for willfully making false declaration as to material matter regarding income taxes when under penalty of perjury); 26 U. S. C. § 9012(d) (maximum five year prison term for knowingly and willfully making misrepresentation of material fact during examination of campaign's matching payment account); 29 U. S. C. § 439(b) (maximum one year prison term for person who knowingly makes false statement of material fact in report required under section 431); 29 U. S. C. § 461(d) (maximum one year prison term for knowing misrepresentation of material fact in report labor organization must file once it assumes trusteeship over subordinate organization); 31 U. S. C. § 5324(b)(2) (prohibiting material omission or misstatement of fact in report on monetary instruments transactions); 42 U. S. C. § 290cc–32 (maximum five year prison term for knowingly making false statement of material fact in sale to state for items or services funded by federal government under Medicare); 42 U. S. C. § 300d–20 (same); 42 U. S. C. § 300e–17(h) (maximum five year prison term for knowingly and willfully making false statement of material fact in [a health maintenance organization's] financial disclosure); 42 U. S. C. § 300w–8(1) (maximum five year prison term for knowingly and willfully making false statement of material fact in sale to state of items or services subsidized by federal government); 42 U. S. C. § 300x–56(b) (same); 42 U. S. C. § 300dd–9 (same—under formula grants to states for care of AIDS patients); 42 U. S. C. § 300ee–19(b) (same—under funds for AIDS prevention); 42 U. S. C. § 707(a)(1) (same—under funds for social security); 42 U. S. C. § 1320a–7b(a)(1) (maximum five year prison term for knowingly and willfully making false statement of material fact in application for payments in federally-approved plans for medical assistance); 42 U. S. C. § 1383a(a)(1) (maximum one year prison term for knowingly and willfully making false statement of material fact in application for Supplemental Security Income benefits); 42 U. S. C. § 1973i (penalizing knowingly false information for purpose of establishing eligibility to vote); 42 U. S. C. § 3795a (penalizing knowing and willful misstatement or concealment of material fact in any application or record required under chapter); 42 U. S. C. § 6928(d)(3)

[Footnote 10 is on p. 507]

such as the one we construed in *United States* v. *Gaudin*, 515 U. S. 506 (1995), criminalize two equally culpable categories of false statements but include an explicit materiality

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(maximum two year prison term for knowingly making false material statement in compliance documents); 42 U. S. C. § 6992d(b)(2) (maximum two year prison term for knowingly making false material statement in compliance documents); 42 U. S. C. § 7413(c)(2) (maximum two year prison term for knowingly making false material statement in documents required under chapter); 46 U. S. C. § 1171(b) (any person who, in application for financial aid under merchant marine act, willfully makes untrue statement of material fact is guilty of misdemeanor); 46 U. S. C. § 31306(d) (maximum five year prison sentence for knowingly making false statement of material fact in declaration of citizenship under Shipping Act); 46 U. S. C. App. § 839 (maximum five year prison term for knowingly making false statement of material fact to secure required approval of Secretary of Transportation); 49 U. S. C. App. § 1472 (maximum three year prison term for knowingly and willfully falsifying or concealing a material fact to obtain [Federal Aviation Administration] certificate); 50 U. S. C. § 855 (maximum five year prison term for willfully making false statement of material fact in registration statement); 50 U. S. C. App. § 1193(h) (maximum two year prison term for knowingly furnishing information that is false or misleading in any material respect regarding renegotiation of airplane contracts)").

[10] See *id.*, at 960, n. 4 ("7 U. S. C. § 614(b–3)(3) (penalizing those who make false statement in application for tax-payment warrant); 7 U. S. C. § 2028(d) (punishing those who obtain funds from a Puerto Rico block grant 'by . . . false statement'); 7 U. S. C. § 6407(e) (barring 'false or unwarranted statements' regarding fluid milk products); 12 U. S. C. § 1782(a)(3) (penalizing false statement in administration of insurance fund); 13 U. S. C. § 213 (penalties for perjury); 12 U. S. C. § 1847 (penalizing false entries in book, report, or statement of bank holding company); 15 U. S. C. § 50 (penalizing false statement to [Federal Trade Commission]); 15 U. S. C. § 645 (offenses and penalties for certain crimes related to commerce and trade); 15 U. S. C. § 714m (punishing knowingly false statement to Commodity Credit Corporation); 15 U. S. C. § 1825(a)(2)(B) (penalizing false statement in report required by Horse Protection Act); 16 U. S. C. § 831t(b) (penalizing false statement to or on behalf of the Tennessee Valley Authority); 18 U. S. C. § 287 (penalizing false claims against U. S. government); 18 U. S. C. § 288 (penalizing false claims for postal losses); 18 U. S. C. § 289 (penalizing false claims for pensions); 18 U. S. C. § 924 (penalizing knowing false statement in information gun dealers must provide); 18 U. S. C. § 1011 (penalizing

requirement in one but not the other category. See *id.*, at 524–525 (REHNQUIST, C. J., concurring). It seems farfetched that Congress made a deliberate decision to include

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knowing false statement in sale of mortgage to federal land bank); 18 U. S. C. § 1012 (penalizing intentional false entry in book of Department of Housing and Urban Development); 18 U. S. C. § 1014 (penalizing false statement to influence federal loan or credit agency); 18 U. S. C. § 1015 (penalizing false statement in naturalization proceeding); 18 U. S. C. § 1018 (penalizing public official who knowingly falsifies official certificate or writing); 18 U. S. C. § 1020 (penalizing false statement regarding highway projects); 18 U. S. C. § 1026 (penalizing false statement regarding farm indebtedness for purpose of influencing Secretary of Agriculture); 18 U. S. C. § 1027 (penalizing false statement in documents required by [Employee Retirement Income Security Act of 1974]); 18 U. S. C. § 1158 (penalizing false statement to secure Indian Arts & Crafts Board trademark); 18 U. S. C. § 1542 (penalizing willful and knowing false statement in passport application); 18 U. S. C. § 1546 (penalizing false statement in immigration documents); 18 U. S. C. § 1712 (penalizing falsification of postal returns to increase compensation); 18 U. S. C. § 1920 (penalizing false statement to obtain Federal employees' compensation); 18 U. S. C. § 2386 (penalizing willful false statement when registering certain organizations); 18 U. S. C. § 2388(a) (penalizing willful false statement with intent to interfere with armed forces during war); 18 U. S. C. § 2424 (penalizing knowing and willful false statement about alien procured or maintained for immoral purposes); 22 U. S. C. § 1980(g) (penalizing false statement in seeking compensation for loss or destruction of commercial fishing vessel or gear); 22 U. S. C. § 2197(n) (penalizing false statement regarding federal insurance of investment in foreign nations); 26 U. S. C. § 7232 (penalizing false statement regarding registration as manufacturer or dealer in gasoline); 29 U. S. C. § 666(g) (penalizing false statement in health and safety report required under this chapter); 30 U. S. C. § 820 (penalizing false statement in document required under subchapter governing mine safety and health); 30 U. S. C. § 941 (penalizing false statement or representation in seeking benefits under subchapter governing mine safety and health); 30 U. S. C. § 1232(d)(1) (penalizing false statement in report submitted with reclamation fee); 30 U. S. C. § 1268(g) (penalizing false statement in documents required by Federal program or Federal Lands program regarding surface mining); 31 U. S. C. § 5322 (penalizing willful violations of subchapter); 33 U. S. C. § 931 (penalizing false statement for purpose of obtaining workers' compensation benefit); 33 U. S. C. § 990(b) (penalizing false statement to corporation governing Saint Lawrence Seaway); 33 U. S. C. § 1319(c)(2) or to omit a materiality requirement every time it created a false statement offense. Far more likely, in my view, Congress simply assumed—as the Government did in *Gaudin*—that the materiality requirement would be implied wherever it was not explicit.

Third, § 1014 was revised at a time when a different view of statutory interpretation held sway. When Congress enacted the current version of the law in 1948, a period marked by a spirit of cooperation between Congress and the Federal Judiciary, Congress looked to the courts to play an important role in the lawmaking process by relying on common-law tradition and common sense to fill gaps in the law—even to imply causes of action and remedies that were not set forth in statutory text. It was only three years earlier that one of the greatest judges of the era—indeed, of any era—had admonished us "not to make a fortress out of the dictionary." *Cabell* v. *Markham*, 148 F. 2d 737, 739 (CA2

(penalizing knowing false statement in record required by chapter on navigation and navigable waters); 38 U. S. C. § 1987 (penalizing knowing false statement in application, waiver of premium, or claim for benefits, for National Service Life Insurance or U. S. government life insurance); 40 U. S. C. § 883(b) (penalizing false statement to Pennsylvania Avenue Development Corp.); 42 U. S. C. § 408 (penalizing false statement to obtain social security benefits); 42 U. S. C. § 1761*(o)* (penalizing false statement in connection with summer food service programs for children at service institutions); 42 U. S. C. § 1973i(c) (penalizing knowing false information for purpose of establishing eligibility to vote); 42 U. S. C. § 3220 ([penalizing] false statement to obtain financial assistance or defraud Secretary of Department of Health and Human Services); 42 U. S. C. § 4912(c) (penalizing false statement in documents filed pursuant to chapter's noise control requirements); 43 U. S. C. § 1350(c) (penalizing knowing false statement in application required under subchapter on submerged public lands); 45 U. S. C. § 231*(l)*(a) (penalizing knowing false statement in report required by subchapter on Rail Road Retirement Accounts); 45 U. S. C. § 359(a) (penalizing knowing false statement to obtain unemployment insurance); 49 U. S. C. Appx. § 2216 (penalizing U. S. officials who knowingly make false statement regarding projects submitted for approval of Secretary of Transportation)").

1945) (L. Hand, J.) The Court's approach to questions of statutory construction has changed significantly since that time.[11] The textual lens through which the Court views the work product of the 1948 revisers is dramatically different from the contemporary legal context in which they labored. In 1948, it was entirely reasonable for Congress and the revisers to assume that the Judiciary would imply a materiality requirement that was a routine aspect of common-law litigation about false statements.

Indeed, subsequent history confirms the reasonableness of such an assumption: The vast majority of judges who have confronted the question have found an implicit materiality requirement in § 1014. As the Court recognizes, all but one of the Courts of Appeals have so held. *Ante,* at 486, n. 3. Moreover, both in this case and in *Gaudin* the prosecutor initially proceeded on the assumption that a nonexplicit statute contained an implicit materiality requirement. Only after it failed to convince us in *Gaudin* that the materiality issue should be resolved by the judge rather than the jury did the Government switch its position and urge us to reject that assumption entirely.

III

Because precedent and statutory history refute the Court's position, its decision today must persuade, if at all, on the basis of its textual analysis. But congressional silence cannot be so convincing when the resulting interpretation is so unlikely.[12] Even the Court's recent jurisprudence affirms that "[t]he purpose of Congress is the ultimate touchstone." *Gade* v. *National Solid Wastes Management Assn.*, 505 U. S. 88, 96 (1992) (internal quotation marks omitted). Mindful of this dictate, the Court has routinely rejected literal statutory interpretations that would lead to anomalous results. See *INS* v. *Cardoza-Fonseca*, 480 U. S. 421, 454 (1987) (SCALIA, J., concurring in judgment) (citing cases). We have been especially willing to reject a purely literal reading of a federal statute that would, as here, expand its coverage far beyond any common-law antecedent.[13] And, as the majority

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[11] See *Middlesex County Sewerage Authority* v. *National Sea Clammers Assn.*, 453 U. S. 1, 24–26 (1981) (STEVENS, J., concurring in judgment in part and dissenting in part).

[12] In fact, the text of § 1014 supports the conclusion that "false statement" was intended to cover only material false statements. That statute forbids a person, in the relevant circumstances, to make "any [1] false statement or [2] report, or willfully overvalu[ing] any [3] land, [4] property or [5] security." 18 U. S. C. § 1014. The four covered actions other than "false statement[s]" are inherently material. Obviously the overvaluing

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of any "land, property or security" will be material to any relevant banking transaction. Similarly, the making of a "false report" will presumably be inherently material since the information requested on the report form will be that which the bank deems "capable of influencing" its decision. Read in this context, and drawing on standard statutory construction techniques, see *Norfolk & Western R. Co.* v. *Train Dispatchers*, 499 U. S. 117, 129 (1991) (applying "*ejusdem generis*"—that general terms should be understood in context of specific ones); *Gustafson* v. *Alloyd Co.*, 513 U. S. 561, 575 (1995) (resolving statutory question problem with "*noscitur a sociis*"—that "a word is known by the company it keeps"), "false statement" means those false statements that are material.

[13] For instance, in *United States* v. *X-Citement Video, Inc.*, 513 U. S. 64 (1994), we held that the "knowingly" requirement of the Protection of Children Against Sexual Exploitation Act of 1977, 18 U. S. C. §2252, applied to the age of the individual visually depicted. We interpreted the statute this way even though it flew in the face of the "most natural grammatical reading." 513 U. S., at 68. To hold otherwise, we explained, would lead to results that were "absurd." Similarly, in *Staples* v. *United States*, 511 U. S. 600 (1994), we held that the National Firearms Act, 26 U. S. C. §§5801–5872, contained an implicit *mens rea* requirement although one was not apparent on the face of the statute. "Section 5861(d) is silent concerning the *mens rea* required for a violation," we explained. 511 U. S., at 605. "Nevertheless, silence on this point by itself does not necessarily suggest that Congress intended to dispense with a conventional *mens rea* element . . . ." *Ibid.*

An understanding of these cases also exposes the illogic of the Government's and the Court's reliance on *United States* v. *Shabani*, 513 U. S. 10 (1994). In *Shabani*, lacking a clear textual directive, we *declined* to depart from the common-law tradition of not requiring proof of an overt act acknowledges, this would not be the first time that we have had to interpret § 1014 so that it would not " 'make a surprisingly broad range of unremarkable conduct a violation of federal law.' " *Ante*, at 498 (quoting *Williams* v. *United States*, 458 U. S. 279, 286–287 (1982)).

Congress, the Court seems to recognize, could not have intended that someone spend up to 30 years in prison for falsely flattering a bank officer for the purpose of obtaining favorable treatment.[14] Yet the Court justifies its interpretation of the statute by positing that a literal reading of § 1014 will not "normally" extend the statute "beyond the limit that a materiality requirement would impose." *Ante*, at 499. In making this assertion, the Court correctly avoids relying on prosecutors not to bring frivolous cases.[15]

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to establish conspiracy. In this case, of course, the Government asks us to do the opposite: to derogate the common law without clear congressional approval.

[14] Consider the following scenario. A crafty homeowner in need of a mortgage, having learned that the bank's loan officer is a bow tie aficionado, purchases his first bow tie to wear at their first meeting. As expected, the loan officer is wearing such a tie, which, incidentally, the prospective borrower considers downright ugly. Nevertheless, thinking that flattery will increase the likelihood that the officer will be favorably disposed to approving the loan, the applicant swallows hard and compliments the officer on his tie; he then volunteers the information that he too always wears a bow tie. This is a lie. Under the majority's interpretation, this person could spend 30 years in federal prison. He made a "false statement." 18 U. S. C. § 1014. In fact, until that day he had never worn a bow tie. And the statement was made "for the purpose of influencing" the bank. *Ibid.* The applicant subjectively hoped that the loan officer—flattered and feeling a sartorial common ground—would be more likely to approve his mortgage.

[15] It is well settled that courts will not rely on "prosecutorial discretion" to ensure that a statute does not ensnare those beyond its proper confines. See *Baggett* v. *Bullitt*, 377 U. S. 360, 373–374 (1964) ("It will not do to say that a prosecutor's sense of fairness and the Constitution would prevent a successful . . . prosecution for some of the activities seemingly embraced within the sweeping statutory definitions"); *Keyishian* v. *Board of Regents of Univ. of State of N. Y.*, 385 U. S. 589, 599 (1967) ("It is no answer

Rather, it appears to have made an empirical judgment that false statements will not "usually" be about a trivial matter, and that the Government will "'relatively rare[ly]'" be able to prove that nonmaterial statements were made for the purpose "of influencing a decision." *Ibid.* I am not at all sure, nor do I know how the Court determined, that attempted flattery is less common than false statements about material facts. Even if it were, the "unusual" nature of trivial statements provides scant justification for reaching the conclusion that Congress intended such peccadillos to constitute a felony.

IV

Today the Court misconstrues § 1014, its history, and our precedents in holding that the statute does not contain a basic materiality requirement. In doing so, the Court confidently asserts that almost every court to interpret § 1014, the revisers of the statute, and the courts discussing *Kay* were all simply wrong. Unwarranted confidence in one's own ability to ascertain the truth has prompted many a victim of deception to make the false statement that "flattery will get you nowhere." It now appears that flattery may get you into a federal prison.

I respectfully dissent.

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to say that the statute would not be applied in such a case"). Prosecutors necessarily enjoy much discretion and generally use it wisely. But the liberty of our citizens cannot rest at the whim of an individual who could have a grudge or, perhaps, just exercise bad judgment.

REPORTER'S NOTE

The next page is purposely numbered 801. The numbers between 513 and 801 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR OCTOBER 7, 1996, THROUGH FEBRUARY 26, 1997

October 7, 1996

Affirmed for Absence of Quorum

No. 95–1733. United States *v.* Hatter, Judge, United States District Court for the Central District of California, et al. C. A. Fed. Cir. Because the Court lacks a quorum, 28 U. S. C. § 1, and since a majority of the qualified Justices are of the opinion that the case cannot be heard and determined at the next Term of the Court, the judgment is affirmed under 28 U. S. C. § 2109, which provides that under these circumstances the Court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided Court. Justice Stevens, Justice O'Connor, Justice Ginsburg, and Justice Breyer took no part in the consideration or decision of this petition. Reported below: 64 F. 3d 647.

Certiorari Granted—Vacated and Remanded

No. 95–1708. Greater New Orleans Broadcasting Assn., Inc., et al. *v.* United States et al. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *44 Liquormart, Inc.* v. *Rhode Island,* 517 U. S. 484 (1996). Reported below: 69 F. 3d 1296.

No. 95–2010. Crouse *v.* United States. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Koon* v. *United States,* 518 U. S. 81 (1996). Reported below: 78 F. 3d 1097.

No. 95–2090. Fields, Director, Oklahoma Department of Corrections, et al. *v.* Battle et al. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the Prison Litigation Reform Act of 1996, Pub. L. No. 104–134, 110 Stat. 1321. Reported below: 81 F. 3d 172.

No. 95–8936. Coffman *v.* United States. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States,* 516 U. S. 137 (1995). Reported below: 67 F. 3d 1154.

No. 95–9077. Moore *v.* United States. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States,* 516 U. S. 137 (1995). Reported below: 61 F. 3d 1189.

No. 96–112. Maryland *v.* Dennis. Ct. App. Md. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Whren* v. *United States,* 517 U. S. 806 (1996). Reported below: 342 Md. 196, 674 A. 2d 928.

Miscellaneous Orders

No. D–1621. In re Disbarment of Harvey. Disbarment entered. [For earlier order herein, see 516 U. S. 1006.]

No. D–1639. In re Disbarment of Farrell. Motion to vacate order of disbarment [516 U. S. 1169] denied.

No. D–1680. In re Disbarment of Calvert. Disbarment entered. [For earlier order herein, see 517 U. S. 1185.]

No. D–1699. In re Disbarment of Barr. Disbarment entered. [For earlier order herein, see 518 U. S. 1037.]

No. D–1701. In re Disbarment of Schimenti. Disbarment entered. [For earlier order herein, see 518 U. S. 1037.]

No. D–1704. In re Disbarment of Cooke. Disbarment entered. [For earlier order herein, see 518 U. S. 1038.]

No. D–1706. In re Disbarment of Swaim. Disbarment entered. [For earlier order herein, see 518 U. S. 1038.]

No. D–1729. In re Disbarment of Gilbert. Wayne Freeman Gilbert, of Rapid City, S. D., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–71 (O. T. 1995). LE MAY *v.* SECRETARY OF HEALTH AND HUMAN SERVICES;

No. M–1. LAWRENCE *v.* SECRETARY OF THE TREASURY;

No. M–3. STRICKLAND *v.* LINAHAN, WARDEN;

No. M–4. LUHRS *v.* KROHN;

No. M–5. FINNEY *v.* STATE FARM FIRE & CASUALTY CO.;

No. M–6. HARRIS *v.* RECTOR AND BOARD OF VISITORS OF THE UNIVERSITY OF VIRGINIA, ET AL.;

No. M–7. HALL *v.* BROWN;

No. M–8. MILLER *v.* UNITED STATES DEPARTMENT OF LABOR ET AL.;

No. M–10. COLSTON *v.* MADISON CORRECTIONAL INSTITUTION ET AL.;

No. M–11. SCHEIDEMANN *v.* IMMIGRATION AND NATURALIZATION SERVICE;

No. M–12. MATTHEWS *v.* PRICE, SUPERINTENDENT, ARKANSAS VALLEY CORRECTIONAL FACILITY, ET AL.; and

No. M–13. MMUBANGO *v.* MINNESOTA DEPARTMENT OF AGRICULTURE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. M–2. RACHAL *v.* TEXAS. Motion to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. M–9. PERSIMMON HOLLOW CO. *v.* CITY OF AUSTIN. Motion to direct the Clerk to file petition for writ of certiorari denied.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for fees and expenses granted, and the River Master is awarded $4,752.67 for the period April 1 through June 30, 1996, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 517 U. S. 1232.]

No. 124, Orig. COLLINS *v.* ALABAMA ET AL. Motion of plaintiff to expedite consideration of motion for leave to file bill of complaint denied. Motion for leave to file bill of complaint denied.

No. 94–820. METROPOLITAN STEVEDORE CO. *v.* RAMBO ET AL., 515 U. S. 291. Motion of respondent Rambo for attorney's fees denied without prejudice to refiling in the United States Court of Appeals for the Ninth Circuit.

No. 94–923. SHAW ET AL. *v.* HUNT, GOVERNOR OF NORTH CAROLINA, ET AL.; and

No. 94–924. POPE ET AL. *v.* HUNT, GOVERNOR OF NORTH CAROLINA, ET AL., 517 U. S. 899. Motion of appellees to retax costs denied.

No. 95–1268. MARYLAND *v.* WILSON. Ct. Sp. App. Md. [Certiorari granted, 518 U. S. 1003.] Motion for appointment of counsel granted, and it is ordered that Byron L. Warnken, Esq., of Baltimore, Md., be appointed to serve as counsel for respondent in this case.

No. 95–1521. UNITED STATES DEPARTMENT OF STATE, BUREAU OF CONSULAR AFFAIRS, ET AL. *v.* LEGAL ASSISTANCE FOR VIETNAMESE ASYLUM SEEKERS, INC., ET AL. C. A. D. C. Cir. [Certiorari granted, 518 U. S. 1003.] Motion of respondents to join additional parties granted. JUSTICE SCALIA, JUSTICE SOUTER, JUSTICE THOMAS, and JUSTICE GINSBURG dissent. Motion of respondents for class certification denied.

No. 95–1605. UNITED STATES *v.* GONZALES ET AL. C. A. 10th Cir. [Certiorari granted, 518 U. S. 1003.] Motion for appointment of counsel granted, and it is ordered that Edward Bustamante, Esq., of Albuquerque, N. M., be appointed to serve as counsel for respondent Miguel Gonzales in this case. Motion for appointment of counsel granted, and it is ordered that Angela Arellanes, Esq., of Albuquerque, N. M., be appointed to serve as counsel for respondent Orlenis Hernandez-Diaz in this case.

No. 95–1682. LOUISIANA LEGISLATIVE BLACK CAUCUS ET AL. *v.* HAYS ET AL., 518 U. S. 1014. Appellees are invited to file a response to the petition for rehearing within 30 days.

No. 95–1694. REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. *v.* DOE. C. A. 9th Cir. [Certiorari granted, 518 U. S. 1004.] Motion for appointment of counsel granted, and it is ordered that Richard Gayer, Esq., of San Francisco, Cal., be appointed to serve as counsel for respondent in this case.

No. 95–1717. UNITED STATES *v.* LANIER. C. A. 6th Cir. [Certiorari granted, 518 U. S. 1004.] Motion for appointment of counsel granted, and it is ordered that Alfred H. Knight, Esq., of Nashville, Tenn., be appointed to serve as counsel for respondent in this case.

No. 95–1918. Arkansas *v.* Farm Credit Services of Central Arkansas et al. C. A. 8th Cir.; and

No. 96–44. CMC Heartland Partners *v.* Union Pacific Railroad Co. C. A. 7th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 95–8736. Ogbomon *v.* United States. C. A. 11th Cir. [Certiorari granted, 518 U. S. 1056.] Thomas G. Hungar, Esq., of Washington, D. C., is invited to brief and argue this case as *amicus curiae* in support of the judgment below.

No. 95–8942. Shoemaker *v.* California et al. C. A. 2d Cir.;

No. 96–5120. Webb *v.* Pulitzer Publishing Co. C. A. 8th Cir.;

No. 96–5214. de la Crùz *v.* New York City Human Resources Administration, Department of Social Services, et al. C. A. 2d Cir.;

No. 96–5351. Geary *v.* Levindale Hebrew Geriatric Center and Hospital. C. A. 4th Cir.; and

No. 96–5360. Gaston *v.* Stone Container Corp. C. A. 8th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 28, 1996, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 95–9203. In re Vey; and

No. 95–9386. In re Vey. Motions of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until October 28, 1996, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 95–9348. In re Franz;

No. 96–5038. In re Thompson;

No. 96–5254. In re Pierson;

No. 96–5265. In re Cross;

No. 96–5526. In re Tripati; and

No. 96–5769. In re Norman. Petitions for writs of habeas corpus denied.

No. 95–2045. In re Moretti;

No. 95–9035. In re White;
No. 95–9076. In re Alston;
No. 95–9180. In re Everett;
No. 95–9314. In re Price;
No. 95–9365. In re Anderson;
No. 95–9382. In re Hope;
No. 95–9461. In re Williams;
No. 96–60. In re Ratcliff;
No. 96–5015. In re Seagrave;
No. 96–5241. In re North;
No. 96–5342. In re Anderson;
No. 96–5356. In re Nelson; and
No. 96–5669. In re Parenteau. Petitions for writs of mandamus denied.

No. 95–9184. In re Jaffer. Petition for writ of mandamus and/or prohibition denied.

No. 95–9235. In re Benton. Petition for writ of prohibition denied.

No. 96–157. In re USAir, Inc. Motion of Air Transport Association of America for leave to file a brief as *amicus curiae* granted. Petition for writ of prohibition denied.

Certiorari Denied

No. 95–1488. Swift *v.* Texas Department of Criminal Justice, Institutional Division, et al. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 474.

No. 95–1498. Hill *v.* Department of the Air Force et al. C. A. 10th Cir. Petition for extraordinary writ and for writ of certiorari denied. Reported below: 68 F. 3d 483.

No. 95–1523. Skott *v.* United States;
No. 95–1883. Stambaugh *v.* United States;
No. 95–8995. Ketchum *v.* United States;
No. 95–9041. Wilson *v.* United States; and
No. 95–9081. Balint *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 73 F. 3d 675.

No. 95–1571. Turner et al. *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 169 Ill. 2d 260, 661 N. E. 2d 329.

No. 95–1573. Stattin *v.* Federal Deposit Insurance Corporation, as Statutory Successor to Resolution Trust Corporation, and as Receiver for Florida Federal Savings, F. S. B., et al. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1252.

No. 95–1575. McGlory *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 72 F. 3d 1160.

No. 95–1592. Cousin *v.* Office of Thrift Supervision, Department of the Treasury. C. A. 2d Cir. Certiorari denied. Reported below: 73 F. 3d 1242.

No. 95–1631. Stangl *v.* Reich, Secretary of Labor. C. A. 10th Cir. Certiorari denied. Reported below: 73 F. 3d 1027.

No. 95–1633. Leinenbach, aka Nelson *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1258.

No. 95–1639. Fields et al. *v.* United States; and
No. 95–9441. Richardson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 72 F. 3d 1200.

No. 95–1659. Lowe *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 65 F. 3d 1137.

No. 95–1662. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, AFL–CIO, et al. *v.* Reno, Attorney General, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 73 F. 3d 1134.

No. 95–1674. Golden et al. *v.* Kelsey-Hayes Co. et al.; and
No. 95–1884. Kelsey-Hayes Co. *v.* Golden et al. C. A. 6th Cir. Certiorari denied. Reported below: 73 F. 3d 648.

No. 95–1675. Conforti, dba C&C Produce *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 74 F. 3d 838.

No. 95–1676. Pettus *v.* I. T. O. Corporation of Virginia et al. C. A. 4th Cir. Certiorari denied. Reported below: 73 F. 3d 523.

No. 95–1680. General Secretariat of the Organization of American States *v.* United States et al. C. A. D. C. Cir. Certiorari denied. Reported below: 73 F. 3d 403.

No. 95–1690. VILLAGER POND, INC. *v.* TOWN OF DARIEN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 56 F. 3d 375.

No. 95–1693. PORTILLO ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 390.

No. 95–1698. GEORGOULIS *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 68 F. 3d 1082.

No. 95–1709. TEMPLETON COAL CO., INC., ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.; and

No. 95–1751. DAVON, INC. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 75 F. 3d 1114.

No. 95–1711. ALLDERS INTERNATIONAL (SHIPS) LTD. ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 942.

No. 95–1725. GOLDEN GATE HOTEL ASSN. *v.* CITY AND COUNTY OF SAN FRANCISCO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 386.

No. 95–1727. CAJUN ELECTRIC POWER COOPERATIVE, INC. *v.* CENTRAL LOUISIANA ELECTRIC CO., INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 74 F. 3d 599.

No. 95–1742. DOE *v.* SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 72 F. 3d 1133.

No. 95–1743. HILL ET AL. *v.* CLIFTON. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1087.

No. 95–1744. HYUNDAI MERCHANT MARINE CO., LTD., ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 75 F. 3d 134.

No. 95–1746. LONGSHORE *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 77 F. 3d 440.

No. 95–1749. HEIL *v.* LEBOW ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 99 F. 3d 401.

No. 95–1756. TOSHIBA AMERICA MEDICAL SYSTEMS, INC. *v.* OEC MEDICAL SYSTEMS, INC. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 95–1757. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 66 *v.* HOUSTON LIGHTING & POWER CO., A SUBSIDIARY OF HOUSTON INDUSTRIES, INC., AS SUCCESSOR IN INTEREST TO UTILITY FUELS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 71 F. 3d 179.

No. 95–1760. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO, LOCAL NO. 243 *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 74 F. 3d 292.

No. 95–1762. DEANNUNTIS *v.* UNITED STATES; and ATLANTIC SCIENCE & TECHNOLOGY, INC. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 77 F. 3d 464.

No. 95–1765. DAN CHASE TAXIDERMY SUPPLY CO., INC., ET AL. *v.* SUPERIOR FORM BUILDERS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 74 F. 3d 488.

No. 95–1766. LAW PRACTICE OF J. B. GROSSMAN, P. A. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 1191.

No. 95–1768. BALLARD *v.* ALBRIGHT, CHAIRMAN, NEWPORT AIRPORT COMMISSION, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 76 F. 3d 382.

No. 95–1769. MCFARLANE *v.* ESQUIRE MAGAZINE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 74 F. 3d 1296.

No. 95–1770. LAFAYETTE MOREHOUSE INC. ET AL. *v.* CHRONICLE PUBLISHING CO. ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 37 Cal. App. 4th 855, 44 Cal. Rptr. 2d 46.

No. 95–1774. MURRAY, AKA COSTA, BY HIS MOTHER AND NEXT FRIEND, MILLER *v.* THOMPSON, SECRETARY, PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 77 F. 3d 463.

No. 95–1781. HENNESSY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–1784. KOSS ET UX. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 69 F. 3d 705.

No. 95–1785. NESSON *v.* MCINTYRE. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 274 Ill. App. 3d 1117, 691 N. E. 2d 1203.

No. 95–1788. TRIM *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 909 P. 2d 841.

No. 95–1789. GREGORY ET AL. *v.* FLORES ET UX. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–1793. STILTNER *v.* BERETTA U. S. A. CORP. C. A. 4th Cir. Certiorari denied. Reported below: 74 F. 3d 1473.

No. 95–1794. MASOTTO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 73 F. 3d 1233.

No. 95–1796. BASICH ET AL. *v.* BOARD OF PENSIONS, EVANGELICAL LUTHERAN CHURCH IN AMERICA, ET AL. Ct. App. Minn. Certiorari denied. Reported below: 540 N. W. 2d 82.

No. 95–1797. FURROW *v.* BISSON. Sup. Ct. Cal. Certiorari denied.

No. 95–1802. COUCHOT ET UX. *v.* OHIO LOTTERY COMMISSION ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 74 Ohio St. 3d 417, 659 N. E. 2d 1225.

No. 95–1803. SPORTING CLUB ACQUISITIONS, LTD. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 10th Cir. Certiorari denied. Reported below: 70 F. 3d 1282.

No. 95–1805. BUSCH, ADMINISTRATOR OF THE ESTATE OF BUSCH, DECEASED *v.* AMREP, INC. Sup. Ct. Ill. Certiorari denied. Reported below: 169 Ill. 2d 325, 662 N. E. 2d 397.

No. 95–1807. BRANCH, TRUSTEE OF BANK OF NEW ENGLAND CORP., DERIVATELY AND ON BEHALF AND IN THE NAME OF MAINE NATIONAL BANK *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 69 F. 3d 1571.

No. 95–1808. UNISYS CORP. ET AL. *v.* MEINHARDT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 74 F. 3d 420.

No. 95–1809. HILL ET AL., INDIVIDUALLY AND AS PARENTS AND NEXT FRIENDS OF HILL, A MINOR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 81 F. 3d 118.

No. 95–1810. Conkle *v.* United States Court of Appeals for the Ninth Circuit (Jeong, dba Laird's Food Market, et al., Real Parties in Interest). C. A. 9th Cir. Certiorari denied. Reported below: 73 F. 3d 909.

No. 95–1811. Storer et ux. *v.* City of Ocean City. C. A. 3d Cir. Certiorari denied. Reported below: 79 F. 3d 1139.

No. 95–1812. Mason & Dixon Lines, Inc. *v.* Central States, Southeast and Southwest Areas Pension Fund et al.; and Central Transport, Inc., et al. *v.* Central States, Southeast and Southwest Areas Pension Fund et al. C. A. 7th Cir. Certiorari denied. Reported below: 77 F. 3d 484 (first judgment); 76 F. 3d 114 (second judgment).

No. 95–1819. McDonnell *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 78 F. 3d 581.

No. 95–1821. Marable *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 95–1825. Laffond *v.* Massachusetts. App. Ct. Mass. Certiorari denied. Reported below: 39 Mass. App. 917, 655 N. E. 2d 384.

No. 95–1828. Certain Real Property Located at 11869 Westshore Drive, Putnam Township, Livingston County, Michigan *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 70 F. 3d 923.

No. 95–1831. Cedar Point Oil Co. *v.* Sierra Club, Lone Star Chapter. C. A. 5th Cir. Certiorari denied. Reported below: 73 F. 3d 546.

No. 95–1832. Park *v.* Howard University. C. A. D. C. Cir. Certiorari denied. Reported below: 71 F. 3d 904.

No. 95–1834. Friedline *v.* New Hampshire Department of Health and Human Services, Office of Child Support. Sup. Ct. N. H. Certiorari denied.

No. 95–1835. Doctors Hospital Real Estate, Ltd., Doctors Hospital Management Co., Inc., Tax Matters Partner *v.* Commissioner of Internal Revenue. C. A. 5th Cir. Certiorari denied. Reported below: 79 F. 3d 1144.

No. 95–1837. Andress *v.* Cleveland Independent School District. C. A. 5th Cir. Certiorari denied. Reported below: 64 F. 3d 176.

No. 95–1839. McDonald *v.* King County. Ct. App. Wash. Certiorari denied. Reported below: 78 Wash. App. 1002.

No. 95–1840. Parker et al *v.* Director, Office of Workers' Compensation Programs, United States Department of Labor, et al. C. A. 4th Cir. Certiorari denied. Reported below: 75 F. 3d 929.

No. 95–1841. Pels *v.* District of Columbia Bar Assn. et al. Ct. App. D. C. Certiorari denied. Reported below: 653 A. 2d 388.

No. 95–1842. Merrett et al. *v.* Moore, Commissioner, Florida Department of Law Enforcement, et al. C. A. 11th Cir. Certiorari denied. Reported below: 58 F. 3d 1547.

No. 95–1844. American Bankers Mortgage Corp. *v.* Federal Home Loan Mortgage Corporation, dba Freddie Mac; and Mortgage Network, Inc., et al. *v.* Federal Home Loan Mortgage Corporation, dba Freddie Mac, et al. C. A. 9th Cir. Certiorari denied. Reported below: 75 F. 3d 1401 (first judgment); 77 F. 3d 489 (second judgment).

No. 95–1846. Holman Warfield *v.* Warfield. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 661 So. 2d 924.

No. 95–1847. Santa Cruz Operation, Inc., et al. *v.* Moskowitz et al. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 95–1848. Dowling *v.* Atlanta City School District et al. Sup. Ct. Ga. Certiorari denied. Reported below: 266 Ga. 217, 466 S. E. 2d 588.

No. 95–1851. Holmes *v.* Griffin. Sup. Ct. Miss. Certiorari denied. Reported below: 667 So. 2d 1319.

No. 95–1852. Orientations Gallery, Inc. *v.* Bakery Centre Associates et al. C. A. 11th Cir. Certiorari denied. Reported below: 54 F. 3d 688.

No. 95–1854. Mauri *v.* City of Portland et al. Ct. App. Ore. Certiorari denied. Reported below: 135 Ore. App. 662, 901 P. 2d 247.

No. 95–1855. Barton et al. *v.* Landmark Land Company of Carolina, Inc., et al. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 553.

No. 95–1856. McGowan *v.* Metropolitan Dade County et al. C. A. 11th Cir. Certiorari denied. Reported below: 69 F. 3d 551.

No. 95–1860. Reyes *v.* Immigration and Naturalization Service. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 158.

No. 95–1861. Immediato et al. *v.* Rye Neck School District et al. C. A. 2d Cir. Certiorari denied. Reported below: 73 F. 3d 454.

No. 95–1863. Klinger et al. *v.* United States et al. C. A. 3d Cir. Certiorari denied. Reported below: 74 F. 3d 1226.

No. 95–1865. Hofman *v.* Godoy. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–1867. Webb *v.* Citicorp Credit Services, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 74 F. 3d 183.

No. 95–1868. Thompson, Administratrix of the Estate of Tabor and Tabor, Deceased, et al. *v.* BIC Corp. C. A. 3d Cir. Certiorari denied. Reported below: 77 F. 3d 464.

No. 95–1869. Dammer *v.* Mercedes-Benz of North America, Inc. C. A. 3d Cir. Certiorari denied. Reported below: 79 F. 3d 1137.

No. 95–1871. Dunn *v.* Denk. C. A. 5th Cir. Certiorari denied. Reported below: 79 F. 3d 401.

No. 95–1874. Mayo et al. *v.* Missouri et al. Sup. Ct. Mo. Certiorari denied. Reported below: 915 S. W. 2d 758.

No. 95–1878. Nelson *v.* J. C. Penney Co., Inc. C. A. 8th Cir. Certiorari denied. Reported below: 75 F. 3d 343.

No. 95–1880. PFS Corp. *v.* Turner et ux. Sup. Ct. Ala. Certiorari denied. Reported below: 674 So. 2d 60.

No. 95–1885. Montag, Individually and as Personal Representative of the Estate of Montag, Deceased *v.* American Honda Motor Co., Inc., et al. C. A. 10th Cir. Certiorari denied. Reported below: 75 F. 3d 1414.

No. 95–1886. Frazier *v.* King, Director, Office of Personnel Management. C. A. Fed. Cir. Certiorari denied. Reported below: 77 F. 3d 1361.

No. 95–1887. Hydranautics *v.* FilmTec Corp. C. A. Fed. Cir. Certiorari denied. Reported below: 67 F. 3d 931.

No. 95–1888. Gimbel *v.* Federal Deposit Insurance Corporation. C. A. 2d Cir. Certiorari denied. Reported below: 77 F. 3d 593.

No. 95–1889. Bechtel Energy Corp. *v.* Reich, Secretary of Labor. C. A. 5th Cir. Certiorari denied.

No. 95–1890. Turner *v.* Brown et al. C. A. 9th Cir. Certiorari denied. Reported below: 73 F. 3d 370.

No. 95–1891. Anderson *v.* Johnson, aka Dortch. Ct. App. Mich. Certiorari denied.

No. 95–1893. International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, Local 737, et al. *v.* Auto Glass Employees Federal Credit Union et al. C. A. 6th Cir. Certiorari denied. Reported below: 72 F. 3d 1243.

No. 95–1895. Asam *v.* Disciplinary Board of the Alabama State Bar. Sup. Ct. Ala. Certiorari denied. Reported below: 675 So. 2d 866.

No. 95–1896. Fully Informed Jury Assn. et al. *v.* County of San Diego et al. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 593.

No. 95–1897. Macaluso *v.* Anderson, dba Anderson Studios, et al. Ct. App. Ariz. Certiorari denied. Reported below: 181 Ariz. 447, 891 P. 2d 914.

No. 95–1898. Shong-Ching Tong *v.* Turner et al. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 1280.

No. 95–1901. Horton *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 11 Cal. 4th 1068, 906 P. 2d 478.

No. 95–1902. Upjohn Co. *v.* Scovish, Administratrix of the Estate of Scovish, Deceased. App. Ct. Conn. Certiorari denied.

No. 95–1904. Botello Cervantes *v.* White, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 95–1908. Teleconcepts, Inc. *v.* MCI Telecommunications Corp. et al. C. A. 3d Cir. Certiorari denied. Reported below: 71 F. 3d 1086.

No. 95–1911. Vega *v.* Rexene Corp. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1242.

No. 95–1912. Matyastik *v.* Texas. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 95–1914. Narducci et al. *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 446 Pa. Super. 678 and 680, 667 A. 2d 420 and 422.

No. 95–1915. Schulze *v.* Commodity Futures Trading Commission. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 766.

No. 95–1916. Moore et al. *v.* Pennsylvania Department of Environmental Resources. Commw. Ct. Pa. Certiorari denied. Reported below: 660 A. 2d 677.

No. 95–1917. Randell *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 64 F. 3d 101.

No. 95–1920. Binderup et al. *v.* Brooks et al. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 39 Cal. App. 4th 1287, 46 Cal. Rptr. 2d 501.

No. 95–1922. Ricketts *v.* City of Hartford et al. C. A. 2d Cir. Certiorari denied. Reported below: 74 F. 3d 1397.

No. 95–1924. Jones et al. *v.* Klein et al.; and

No. 96–9. Arkoma Production Co. et al. *v.* Klein et al. C. A. 8th Cir. Certiorari denied. Reported below: 73 F. 3d 779.

No. 95–1925. Oxford House-C. et al. *v.* City of St. Louis. C. A. 8th Cir. Certiorari denied. Reported below: 77 F. 3d 249.

No. 95–1926. Barber *v.* Hallmark Cards, Inc. C. A. 10th Cir. Certiorari denied. Reported below: 74 F. 3d 1248.

No. 95–1927. Cannon, Individually, and on Behalf of the Estate of Cannon, Deceased *v.* Group Health Service of Oklahoma, Inc., dba Blue Cross & Blue Shield of Oklahoma, Inc., et al. C. A. 10th Cir. Certiorari denied. Reported below: 77 F. 3d 1270.

No. 95–1928. Blinder et al. *v.* Hoxworth et al. C. A. 10th Cir. Certiorari denied. Reported below: 74 F. 3d 205.

No. 95–1930. General Motors Corp. *v.* City of Linden et al. Sup. Ct. N. J. Certiorari denied. Reported below: 143 N. J. 336, 671 A. 2d 560.

No. 95–1931. Neumann *v.* Page, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 78 F. 3d 587.

No. 95–1932. Abrahams *v.* Young & Rubicam Inc. et al. C. A. 2d Cir. Certiorari denied. Reported below: 79 F. 3d 234.

No. 95–1933. Rogers et al. *v.* Rogers et al. Sup. Ct. Va. Certiorari denied.

No. 95–1935. Glover et al. *v.* McGinnis et al. C. A. 6th Cir. Certiorari denied. Reported below: 75 F. 3d 264.

No. 95–1937. Schwartz *v.* Doc's Food Stores, Inc. Ct. App. Okla. Certiorari denied.

No. 95–1938. Izadpanah et al. *v.* Gross et al. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 373.

No. 95–1939. All Right, Title and Interest in Real Property and Appurtenances Thereto Known as 143–147 East 23rd Street, New York, New York, et al. *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 77 F. 3d 648.

No. 95–1940. McKoy et ux. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 446.

No. 95–1941. McAllister *v.* Telxon Corp. et al. C. A. 5th Cir. Certiorari denied. Reported below: 35 F. 3d 560.

No. 95–1942. Harney *v.* California State Bar. Sup. Ct. Cal. Certiorari denied.

No. 95–1943. Barkley, Trustee *v.* Conner et al. C. A. 9th Cir. Certiorari denied. Reported below: 73 F. 3d 258.

No. 95–1944. Pippin *v.* Bennett. C. A. 5th Cir. Certiorari denied. Reported below: 74 F. 3d 578.

No. 95–1945. Greenspan *v.* National Labor Relations Board. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 107.

No. 95–1946. Sims *v.* Brown & Root Industrial Services, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 78 F. 3d 581.

No. 95–1947. Valmet Oy et al. *v.* Aldy, Individually and as Legal Representative of Aldy, Deceased, et al. C. A. 5th Cir. Certiorari denied. Reported below: 74 F. 3d 72.

No. 95–1949. Neuman *v.* Bennett. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 664 So. 2d 261.

No. 95–1950. Dunmeyer et al. *v.* Becton, Dickinson & Co. C. A. 9th Cir. Certiorari denied. Reported below: 74 F. 3d 1246.

No. 95–1952. Fukutomi *v.* United States Trustee. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 256.

No. 95–1953. Burns *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 595.

No. 95–1954. Hopewell *v.* Midcontinent Broadcasting Corp., dba KELO-Land News, et al. Sup. Ct. S. D. Certiorari denied. Reported below: 538 N. W. 2d 780.

No. 95–1955. Goranowski *v.* Department of Education. C. A. 4th Cir. Certiorari denied. Reported below: 70 F. 3d 111.

No. 95–1957. ALASKA *v.* BABBITT, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 75 F. 3d 449.

No. 95–1958. JACKSON *v.* CITY OF ATLANTA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 73 F. 3d 60.

No. 95–1959. ABOU-KASSEM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 F. 3d 161.

No. 95–1960. SPANG & CO. ET AL. *v.* BRYTUS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 79 F. 3d 1137.

No. 95–1961. HOPKINS *v.* BALTIMORE GAS & ELECTRIC CO. C. A. 4th Cir. Certiorari denied. Reported below: 77 F. 3d 745.

No. 95–1963. RUCKER *v.* CITICORP SAVINGS OF ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 95–1964. HINCHLIFFE ET UX. *v.* TRANSAMERICA FINANCIAL CONSUMER DISCOUNT CO. C. A. 3d Cir. Certiorari denied. Reported below: 72 F. 3d 123.

No. 95–1965. BREGAR *v.* CITY OF CLEVELAND. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 106 Ohio App. 3d 713, 667 N. E. 2d 42.

No. 95–1967. SEETHARAMAN *v.* COMMONWEALTH EDISON CO. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 1150.

No. 95–1968. BONO ET UX. *v.* HAMILTON ET AL. Sup. Ct. Ala. Certiorari denied.

No. 95–1970. SUEHL *v.* SUEHL. C. A. 8th Cir. Certiorari denied.

No. 95–1971. VILLAGE OF CHAGRIN FALLS, OHIO *v.* KRUSE ET UX. C. A. 6th Cir. Certiorari denied. Reported below: 74 F. 3d 694.

No. 95–1972. CHURCH MUTUAL INSURANCE CO. *v.* MOUNT CALVARY BAPTIST CHURCH, AKA MOUNT CALVARY BAPTIST CHURCH AND SCHOOL, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 70 F. 3d 51.

No. 95–1973. GREATER MINISTRIES INTERNATIONAL, INC. *v.* FLORIDA. Cir. Ct. Hillsborough County, Fla. Certiorari denied.

No. 95–1976. Rambo *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 74 F. 3d 948.

No. 95–1977. Commodities Export Co. et al. *v.* United States et al. C. A. 6th Cir. Certiorari denied. Reported below: 76 F. 3d 380.

No. 95–1978. Cal-Almond, Inc., et al. *v.* Department of Agriculture. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 874.

No. 95–1979. Hogan et al. *v.* Wisconsin Department of Revenue. Ct. App. Wis. Certiorari denied. Reported below: 198 Wis. 2d 792, 543 N. W. 2d 825.

No. 95–1983. McWilliams *v.* Fairfax County Board of Supervisors. C. A. 4th Cir. Certiorari denied. Reported below: 72 F. 3d 1191.

No. 95–1984. Preferred Meal Systems, Inc. *v.* Kalwaytis et al. C. A. 3d Cir. Certiorari denied. Reported below: 78 F. 3d 117.

No. 95–1985. Santobello *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 108.

No. 95–1986. Rosen *v.* Ciba-Geigy Corp. C. A. 7th Cir. Certiorari denied. Reported below: 78 F. 3d 316.

No. 95–1987. Dayton Hudson Department Store Co., a Division of Dayton Hudson Corp. *v.* National Labor Relations Board. C. A. 6th Cir. Certiorari denied. Reported below: 79 F. 3d 546.

No. 95–1988. Bovis *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 95–1989. Soto *v.* Lebedeva. Sup. Ct. Va. Certiorari denied.

No. 95–1990. Albanese et al. *v.* Federal Election Commission et al. C. A. 2d Cir. Certiorari denied. Reported below: 78 F. 3d 66.

No. 95–1991. Antonio Duque *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1146.

No. 95–1992. THOMAS ET UX. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 74 F. 3d 701.

No. 95–1993. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 74 F. 3d 891.

No. 95–1995. MELTON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1153.

No. 95–1996. KUNKES *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 78 F. 3d 1549.

No. 95–1997. AMERITAS INVESTMENT CORP., FKA BLN INVESTMENT CORP. *v.* SLINKARD. Ct. App. Okla. Certiorari denied.

No. 95–1998. TSENG *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1154.

No. 95–2000. LEVINE *v.* CENTRAL FLORIDA MEDICAL AFFILIATES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 72 F. 3d 1538.

No. 95–2001. COWHIG *v.* WEST, SECRETARY OF THE ARMY, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 70 F. 3d 110.

No. 95–2002. PACKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 F. 3d 357.

No. 95–2003. BENSON *v.* COMMUNICATIONS WORKERS OF AMERICA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 148.

No. 95–2004. NOBILE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 77 F. 3d 465.

No. 95–2005. VALDER *v.* MOORE. C. A. D. C. Cir. Certiorari denied. Reported below: 65 F. 3d 189.

No. 95–2008. MARKS *v.* UNITED STATES;
No. 95–2013. TUCKER *v.* UNITED STATES; and
No. 95–2070. HALEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 1313.

No. 95–2009. PIPKIN *v.* MORTGAGE CREDITCORP., INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 72 F. 3d 138.

No. 95–2012. FENT ET VIR *v.* SOUTHWESTERN BELL TELEPHONE CO. ET AL. Ct. App. Okla. Certiorari denied.

No. 95–2014. KNIGHT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 309.

No. 95–2015. MCGILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 74 F. 3d 64.

No. 95–2016. SANDOVAL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 69 F. 3d 531.

No. 95–2017. RYCKMAN ET AL. *v.* ENVIRODYNE INDUSTRIES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 579.

No. 95–2019. ACHILLES CORP. *v.* KAEPA, INC. C. A. 5th Cir. Certiorari denied. Reported below: 76 F. 3d 624.

No. 95–2020. JASPAN ET AL. *v.* GLOVER BOTTLED GAS CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 80 F. 3d 38.

No. 95–2021. GANDARA-GRANILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 74 F. 3d 545.

No. 95–2022. THIRY ET AL. *v.* CARLSON, SECRETARY OF TRANSPORTATION OF KANSAS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 78 F. 3d 1491.

No. 95–2023. LINDSEY *v.* ALABAMA STATE BAR. Sup. Ct. Ala. Certiorari denied. Reported below: 677 So. 2d 252.

No. 95–2026. PETTIT *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 106 Md. App. 777.

No. 95–2027. DEPENBROCK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1154.

No. 95–2028. COX ET AL. *v.* TREADWAY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 75 F. 3d 230.

No. 95–2029. SIMMONS *v.* BURNS, COMMISSIONER, CONNECTICUT DEPARTMENT OF TRANSPORTATION. C. A. 2d Cir. Certiorari denied.

No. 95-2030. SCHULZ *v.* CITY OF VERNON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 46 F. 3d 66.

No. 95-2032. SUNAMERICA CORP. ET AL. *v.* SUN LIFE ASSURANCE COMPANY OF CANADA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 1325.

No. 95-2035. MOORMAN ET AL. *v.* FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS. Sup. Ct. Fla. Certiorari denied. Reported below: 664 So. 2d 930.

No. 95-2036. BONNETTE ET AL. *v.* ODECO OIL & GAS CO., DRILLING DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 74 F. 3d 671.

No. 95-2037. PICKLESIMER *v.* COX ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 79 F. 3d 1141.

No. 95-2039. LOGAN *v.* BENNINGTON COLLEGE CORP. C. A. 2d Cir. Certiorari denied. Reported below: 72 F. 3d 1017.

No. 95-2040. TSENG FU LIN, DBA ORIENTAL JADE RESTAURANT *v.* CITY OF GOLDSBORO ET AL. Ct. App. N. C. Certiorari denied. Reported below: 121 N. C. App. 220, 465 S. E. 2d 348.

No. 95-2041. PARA-ORDNANCE MANUFACTURING, INC. *v.* SGS IMPORTERS INTERNATIONAL, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 73 F. 3d 1085.

No. 95-2042. VARALLO *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 913 P. 2d 1.

No. 95-2043. WESTERN RADIO SERVICES CO., INC. *v.* GLICKMAN, SECRETARY OF AGRICULTURE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 896.

No. 95-2044. RAY ET UX. *v.* WILLETT. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 221 App. Div. 2d 613, 634 N. Y. S. 2d 160.

No. 95-2046. HOWARD *v.* TOWN OF CHAPEL HILL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 373.

No. 95-2047. OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION ET AL. *v.* MOUNTAINEER GAS CO. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 606.

No. 95–2048. Mobile Telecommunication Technologies Corp. et al. *v.* Federal Communications Commission. C. A. D. C. Cir. Certiorari denied. Reported below: 77 F. 3d 1399.

No. 95–2049. Generes *v.* Morrell et vir. C. A. 7th Cir. Certiorari denied. Reported below: 69 F. 3d 821.

No. 95–2050. J. Geils Band Employee Benefit Plan et al. *v.* Smith Barney Shearson, Inc., et al. C. A. 1st Cir. Certiorari denied. Reported below: 76 F. 3d 1245.

No. 95–2051. Stiffarm *v.* Burlington Northern Railroad Co. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 170.

No. 95–2053. Beckey, dba American Institute of Law, Economics & Comparative Studies *v.* Cenlar Federal Savings Bank. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 95–2054. Gustafson *v.* City of Lake Angelus et al. C. A. 6th Cir. Certiorari denied. Reported below: 76 F. 3d 778.

No. 95–2055. Angino et ux. *v.* Board of Supervisors of Middle Paxton Township. Commw. Ct. Pa. Certiorari denied. Reported below: 663 A. 2d 900.

No. 95–2056. Sinisterra *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 101.

No. 95–2057. Goss *v.* Singletary, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1253.

No. 95–2058. Chrysler Corp. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 86 F. 3d 1173.

No. 95–2059. Boggi *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 74 F. 3d 470.

No. 95–2061. Nordahl *v.* Studer Revox America, Inc., et al. C. A. 6th Cir. Certiorari denied. Reported below: 78 F. 3d 585.

No. 95–2063. Lang *v.* Furr. Ct. App. S. C. Certiorari denied.

No. 95–2064. LORD, SUPERINTENDENT, BEDFORD HILLS CORRECTIONAL FACILITY, ET AL. *v.* DELUCA. C. A. 2d Cir. Certiorari denied. Reported below: 77 F. 3d 578.

No. 95–2065. YANG ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 932.

No. 95–2066. LEVINE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 80 F. 3d 129.

No. 95–2067. ROBINSON ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 70 F. 3d 34.

No. 95–2068. SPERLING *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 95–2069. FLORIDA DEPARTMENT OF REVENUE ET AL. *v.* GENERAL DEVELOPMENT CORP. C. A. 11th Cir. Certiorari denied. Reported below: 82 F. 3d 428.

No. 95–2071. HARGETT *v.* NATIONAL WESTMINSTER BANK, USA, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 78 F. 3d 836.

No. 95–2073. ARENA SPORTS, INC., ET AL. *v.* FIRST AMERICAN BANK OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 659.

No. 95–2075. HARVEY *v.* WISCONSIN BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY. Sup. Ct. Wis. Certiorari denied. Reported below: 197 Wis. 2d 121, 539 N. W. 2d 453.

No. 95–2076. FERNANDES *v.* ROCKAWAY TOWNSHIP TOWN COUNCIL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 82 F. 3d 405.

No. 95–2078. SPRING MEADOWS APARTMENT COMPLEX LIMITED PARTNERSHIP *v.* STALLINGS ET UX. Sup. Ct. Ariz. Certiorari denied. Reported below: 185 Ariz. 156, 913 P. 2d 496.

No. 95–2079. HAAS, BY AND THROUGH HER FATHER AND LEGAL GUARDIAN, HAAS *v.* WYATT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 498.

No. 95–2080. ZUCKER *v.* QUASHA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 82 F. 3d 408.

No. 95–2081. WILLIAMS *v.* SAN GORGONIO FARMS, INC. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–2083. CHERRY HILLS RESORT DEVELOPMENT CO. *v.* CITY OF CHERRY HILLS VILLAGE. Ct. App. Colo. Certiorari denied.

No. 95–2084. CHAKALES ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 79 F. 3d 726.

No. 95–2085. DURKIN ET AL. *v.* MAJOR LEAGUE BASEBALL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 85 F. 3d 611.

No. 95–2086. BRODERICK *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 80 F. 3d 64.

No. 95–2087. MCCARTHY ET AL. *v.* RECORDEX SERVICES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 80 F. 3d 842.

No. 95–2089. STROBRIDGE *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 89 F. 3d 826.

No. 95–2092. FARUQUI *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 72 F. 3d 135.

No. 95–2094. DEAN WITTER REYNOLDS INC. *v.* HARRISON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 609.

No. 95–2095. SEROT *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 74 F. 3d 1227.

No. 95–8311. JONES *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 657 So. 2d 1190.

No. 95–8319. OGDEN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 658 So. 2d 621.

No. 95–8346. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 63 F. 3d 1342.

No. 95–8374. PITTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 72 F. 3d 128.

No. 95–8402. HERNANDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 71 F. 3d 1375.

No. 95–8415. OWENS *v.* WHITE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1254.

No. 95–8437. HENRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 74 F. 3d 1238.

No. 95–8451. BROUSSARD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 910 S. W. 2d 952.

No. 95–8478. WITHERSPOON *v.* BIBBINGS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 95–8487. RODRIGUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 79 F. 3d 1140.

No. 95–8509. LEE *v.* HALL. Sup. Ct. S. C. Certiorari denied.

No. 95–8511. LAWTON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 913 S. W. 2d 542.

No. 95–8520. LLOYD *v.* ROBINSON, SECRETARY, MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES. Ct. Sp. App. Md. Certiorari denied. Reported below: 106 Md. App. 800.

No. 95–8536. WOFFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 679.

No. 95–8551. WALKER *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 910 S. W. 2d 381.

No. 95–8585. JONES *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 542 Pa. 464, 668 A. 2d 491.

No. 95–8588. SUMMERS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 95–8630. LOWE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 389.

No. 95–8631. MCQUILKIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 78 F. 3d 105.

No. 95–8637. PIGOTT *v.* UNITED HOMES FOR CHILDREN ET AL. App. Ct. Mass. Certiorari denied. Reported below: 39 Mass. App. 1108, 655 N. E. 2d 390.

No. 95–8640. HENDERSON *v.* STEWART ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 415.

No. 95–8653. PATCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 498.

No. 95–8665. MACK *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 197 Wis. 2d 955, 543 N. W. 2d 867.

No. 95–8676. KNIGHT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 73 F. 3d 117.

No. 95–8677. LOPEZ *v.* REICH, SECRETARY OF LABOR. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 157.

No. 95–8698. DORTCH *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 666 So. 2d 146.

No. 95–8704. JOHNSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 542 Pa. 384, 668 A. 2d 97.

No. 95–8710. JACKSON *v.* UNITED STATES; and
No. 95–8714. WALLS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 70 F. 3d 1323.

No. 95–8712. DIENSTBERGER *v.* GENERAL MOTORS CORP. C. A. 6th Cir. Certiorari denied. Reported below: 66 F. 3d 325.

No. 95–8722. ANDERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 76 F. 3d 685.

No. 95–8725. ZUCCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 F. 3d 188.

No. 95–8727. GARY *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 913 S. W. 2d 822.

No. 95–8750. LEDUC *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 421 Mass. 433, 657 N. E. 2d 755.

No. 95–8757. COLEMAN *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 168 Ill. 2d 509, 660 N. E. 2d 919.

No. 95–8767. BUCKNER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 342 N. C. 198, 464 S. E. 2d 414.

No. 95–8768. KEENE *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 169 Ill. 2d 1, 660 N. E. 2d 901.

No. 95–8785. KACZYNSKI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 95–8793. JANES *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 168 Ill. 2d 382, 660 N. E. 2d 980.

No. 95–8795. SIMS *v.* AULT, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–8797. WILLIAMS *v.* LEWIS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 154.

No. 95–8809. FREDERICK *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 71 F. 3d 881.

No. 95–8811. HEMMERLE *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 497.

No. 95–8812. HORTON *v.* SCOTT, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 71 F. 3d 877.

No. 95–8813. LOCKERBY *v.* PIMA COUNTY. Ct. App. Ariz. Certiorari denied.

No. 95–8819. ZAVESKY *v.* MILLER, SUPERINTENDENT, CORRECTIONAL INDUSTRIAL COMPLEX, PENDLETON, INDIANA. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 554.

No. 95–8825. VAN DOREN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 444 Pa. Super. 686, 663 A. 2d 255.

No. 95–8826. HAYNES *v.* LEMANN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 338.

No. 95–8827. HOFMANN *v.* PRESSMAN TOY CORP. ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–8829. McAdams *v.* MNC Credit Corp. et al. C. A. 8th Cir. Certiorari denied. Reported below: 72 F. 3d 133.

No. 95–8830. Kukes *v.* Calderon, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1153.

No. 95–8835. Smith *v.* Singletary, Secretary, Florida Department of Corrections. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 666 So. 2d 986.

No. 95–8838. Williams *v.* Kansas. Sup. Ct. Kan. Certiorari denied. Reported below: 259 Kan. 432, 913 P. 2d 587.

No. 95–8841. Jennings *v.* Ohio. Ct. App. Ohio, Huron County. Certiorari denied.

No. 95–8842. Klais *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 68 F. 3d 1282.

No. 95–8844. Lane *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 221 App. Div. 2d 948, 635 N. Y. S. 2d 573.

No. 95–8852. Heiden *v.* Texas. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 95–8856. Dix *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 496.

No. 95–8859. Enoch *v.* Gramley, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 70 F. 3d 1490.

No. 95–8861. Valliere et al. *v.* Maine Workers' Compensation Board et al. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 669 A. 2d 1328.

No. 95–8863. Delia *v.* Itochu International, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 89 F. 3d 825.

No. 95–8864. Luis *v.* Prunty, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 95–8865. Mitchell *v.* Roy et al. C. A. 5th Cir. Certiorari denied. Reported below: 69 F. 3d 536.

No. 95–8868. McIntyre et ux. *v.* Gilmore, Attorney General of Virginia, et al. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 374.

No. 95–8870. GREGORY ET AL. *v.* BOTZHEIM ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 910.

No. 95–8871. HAYNES *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 656 So. 2d 1278.

No. 95–8873. NEGEWO *v.* ABEBE-JIRI ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 72 F. 3d 844.

No. 95–8877. PENMAN *v.* LEAVITT, GOVERNOR OF UTAH, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 77 F. 3d 493.

No. 95–8879. RODRIGUEZ *v.* EDMONDSON, ATTORNEY GENERAL OF OKLAHOMA. C. A. 10th Cir. Certiorari denied. Reported below: 78 F. 3d 597.

No. 95–8885. SIEGEL *v.* DOE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 95–8886. WELLONS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 266 Ga. 77, 463 So. 2d 868.

No. 95–8887. WILLIAMS *v.* JACKSON STONE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 621.

No. 95–8889. WILSON *v.* LANE, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 419.

No. 95–8892. FISCHER *v.* DELSANTE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 941.

No. 95–8893. OWENS *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 95–8895. STRICKLAND *v.* GRIDLEY, JUDGE, CIRCUIT COURT OF FLORIDA, ORANGE COUNTY, ET AL.; and STRICKLAND *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 95–8897. GAINES *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 95–8898. BLACK *v.* MORALES, ATTORNEY GENERAL OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–8903. Everman *v.* Albertson's, Inc. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 95–8904. Foster *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 168 Ill. 2d 465, 660 N. E. 2d 951.

No. 95–8905. Warren *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 63 F. 3d 327.

No. 95–8906. Pargo et al. *v.* Elliott et al. C. A. 8th Cir. Certiorari denied. Reported below: 69 F. 3d 280.

No. 95–8909. Sloan *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 95–8911. McDaniel *v.* Berger. Ct. App. Okla. Certiorari denied.

No. 95–8912. McBride *v.* Texas. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 95–8913. Metcalf *v.* Carlton, Warden. C. A. 6th Cir. Certiorari denied.

No. 95–8914. McLeod, aka Hogan *v.* Butterworth, Attorney General of Florida, et al. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 1284.

No. 95–8915. McNabb *v.* White, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 95–8918. Lucas *v.* North Carolina. Ct. App. N. C. Certiorari denied. Reported below: 120 N. C. App. 884, 464 S. E. 2d 95.

No. 95–8920. Edwards *v.* Kernan, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 73 F. 3d 368.

No. 95–8921. Miller *v.* Illinois. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 276 Ill. App. 3d 1144, 697 N. E. 2d 25.

No. 95–8925. Blackmon *v.* Indiana. Sup. Ct. Ind. Certiorari denied. Reported below: 647 N. E. 2d 1126.

No. 95–8935. Cargle *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 909 P. 2d 806.

No. 95–8938. Collins *v.* Maryland. Cir. Ct. Somerset County, Md. Certiorari denied.

No. 95–8939. White *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 95–8945. Reams *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 322 Ark. 336, 909 S. W. 2d 324.

No. 95–8948. Smith *v.* Local Union 28 Sheet Metal Workers et al. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 943.

No. 95–8951. Roland *v.* McDonnell Douglas Corp. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 1279.

No. 95–8953. Smith *v.* United States District Court for the Northern District of New York. C. A. 2d Cir. Certiorari denied.

No. 95–8958. Gould *v.* Pellella et al. Super. Ct. N. J., App. Div. Certiorari denied.

No. 95–8960. Davis *v.* Leonardo, Superintendent, Great Meadow Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 95–8963. Howard *v.* Potter et al. C. A. 9th Cir. Certiorari denied. Reported below: 65 F. 3d 175.

No. 95–8967. Forrest *v.* Vasquez, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 75 F. 3d 562.

No. 95–8968. Ebb *v.* Maryland. Ct. App. Md. Certiorari denied. Reported below: 341 Md. 578, 671 A. 2d 974.

No. 95–8969. Hageman *v.* Leason. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1254.

No. 95–8970. Sawyer *v.* Hickey et al. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 472.

No. 95–8973. Mayrant *v.* Goff, Clerk, Magistrate's Court of Sumter County. Sup. Ct. S. C. Certiorari denied.

No. 95–8974. McCullough *v.* Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 70 F. 3d 1267.

No. 95–8975. El Jabaar *v.* Young. C. A. 6th Cir. Certiorari denied.

No. 95–8976. Minetti *v.* Port of Seattle et al. Sup. Ct. Wash. Certiorari denied.

No. 95–8978. Iguwa *v.* Immigration and Naturalization Service. C. A. 5th Cir. Certiorari denied. Reported below: 83 F. 3d 418.

No. 95–8981. Kochvi *v.* New Hampshire. Sup. Ct. N. H. Certiorari denied. Reported below: 140 N. H. 662, 671 A. 2d 115.

No. 95–8983. Coleman *v.* Murphy et al. C. A. 2d Cir. Certiorari denied.

No. 95–8984. Chaudhary *v.* O'Neil et al. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 1277.

No. 95–8985. Cochran *v.* CSX Transportation, Inc., et al. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 371.

No. 95–8986. Craig *v.* Martin, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 76 F. 3d 392.

No. 95–8987. Tyler *v.* Carnahan, Governor of Missouri, et al. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 589.

No. 95–8989. Baker *v.* Lusk et al. C. A. 5th Cir. Certiorari denied.

No. 95–8991. Coronado *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 12 Cal. 4th 145, 906 P. 2d 1232.

No. 95–8993. Simpson *v.* Rowan et al. C. A. 7th Cir. Certiorari denied. Reported below: 73 F. 3d 134.

No. 95–8997. Meshell *v.* Roberts, Superintendent, Mississippi State Penitentiary. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 471.

No. 95–9002. Long *v.* Sparkman, Warden, et al. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 160.

No. 95–9004. Pazol *v.* Parker, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1113.

No. 95–9005. Ross *v.* Ieyoub, Attorney General of Louisiana, et al. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 475.

No. 95–9006. Carroll *v.* Local 144 Pension Fund et al. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 943.

No. 95–9007. Bradley *v.* Fields. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 271 Ill. App. 3d 1134, 688 N. E. 2d 150.

No. 95–9009. Carey *v.* Johnson et al. C. A. 5th Cir. Certiorari denied.

No. 95–9010. Griffin *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 266 Ga. 115, 464 S. E. 2d 371.

No. 95–9011. Domino *v.* White, Warden. C. A. 9th Cir. Certiorari denied.

No. 95–9013. Godaire *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 95–9016. Franklin *v.* Immigration and Naturalization Service. C. A. 8th Cir. Certiorari denied. Reported below: 72 F. 3d 571.

No. 95–9017. Graham *v.* Oregon et al. C. A. 9th Cir. Certiorari denied. Reported below: 77 F. 3d 489.

No. 95–9018. Akbar-El *v.* Wise et al. C. A. 6th Cir. Certiorari denied.

No. 95–9019. Portee *v.* Clarke, Warden. C. A. 9th Cir. Certiorari denied.

No. 95–9020. Barry *v.* Pennsylvania Higher Education Assistance Agency. Sup. Ct. Pa. Certiorari denied. Reported below: 543 Pa. 610, 673 A. 2d 914.

No. 95–9021. Memro *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 11 Cal. 4th 786, 905 P. 2d 1305.

No. 95–9023. Chalmars *v.* Mitchell, Superintendent, Eastern Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 73 F. 3d 1262.

No. 95–9024. Thomas *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 477.

No. 95–9026. Mouradian *v.* Michigan Attorney Discipline Board. C. A. 6th Cir. Certiorari denied. Reported below: 78 F. 3d 584.

No. 95–9027. Moghal *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 71 F. 3d 406.

No. 95–9028. Murrell *v.* University of South Carolina. Ct. App. S. C. Certiorari denied.

No. 95–9029. Padilla *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 11 Cal. 4th 891, 906 P. 2d 388.

No. 95–9032. Khalil *v.* Carroll, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 72 F. 3d 135.

No. 95–9034. McDuff *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 414.

No. 95–9036. Ross *v.* Communication Workers of America, Local 1110. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 944.

No. 95–9037. Sanchez *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 12 Cal. 4th 1, 906 P. 2d 1129.

No. 95–9039. Ponce-Partida *v.* California. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 95–9040. Valencia Romero *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 944.

No. 95–9042. Maddox *v.* Odom et al. C. A. 4th Cir. Certiorari denied. Reported below: 73 F. 3d 358.

No. 95–9044. Carpenter *v.* Chapleau, Warden, et al. C. A. 6th Cir. Certiorari denied. Reported below: 72 F. 3d 1269.

No. 95–9046. Lazich *v.* Burrows, Judge, Supreme Court of New York, 9th Judicial District. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 943.

No. 95–9049. Williams *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 74 Ohio St. 3d 569, 660 N. E. 2d 724.

No. 95–9051. Otte *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 74 Ohio St. 3d 555, 660 N. E. 2d 711.

No. 95–9053. Banks *v.* Sikes, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 73 F. 3d 1108.

No. 95–9055. Blake *v.* Murray et al. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 124.

No. 95–9057. Butler *v.* New York (two judgments). App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 222 App. Div. 2d 1115, 636 N. Y. S. 2d 700 (first judgment); 222 App. Div. 2d 1115, 636 N. Y. S. 2d 536 (second judgment).

No. 95–9058. Mitchell *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 95–9059. Hoover *v.* Suffolk University Law School et al. C. A. 1st Cir. Certiorari denied. Reported below: 27 F. 3d 554.

No. 95–9062. Fisher *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 95–9065. Howard *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 77 F. 3d 484.

No. 95–9066. Greenlaw *v.* Dalton, Secretary of the Navy, et al. C. A. 9th Cir. Certiorari denied.

No. 95–9067. Hubbard *v.* Dorsey, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 77 F. 3d 492.

No. 95–9068. Sawyer *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 473.

No. 95–9069. Coe *v.* Angelone, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 70 F. 3d 1261.

No. 95–9072. Fuller *v.* Police Department of Bossier City et al. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 414.

No. 95–9078. Sawyer *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division, et al. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 154.

No. 95–9083. Waterfield *v.* Vocelle, Judge, Circuit Court of Florida, Indian River County, et al. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 668 So. 2d 617.

No. 95–9084. Waterfield *v.* Swigert, Chief Judge, Circuit Court of Florida, Marion County. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 95–9085. Reyes *v.* Roe, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 95–9087. Richie *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 908 P. 2d 268.

No. 95–9088. Brown *v.* American Express Travel Related Services Co., Inc. C. A. 5th Cir. Certiorari denied. Reported below: 71 F. 3d 878.

No. 95–9089. Laufman *v.* Mayer et al. C. A. 9th Cir. Certiorari denied. Reported below: 77 F. 3d 489.

No. 95–9091. Morvant *v.* Chater, Commissioner of Social Security. C. A. 5th Cir. Certiorari denied. Reported below: 78 F. 3d 581.

No. 95–9094. Garrett *v.* Department of Defense. C. A. Fed. Cir. Certiorari denied.

No. 95–9095. Greene et al. *v.* Tucker et al. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 325.

No. 95–9096. Galloway *v.* Roe, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 95–9097. Finfrock *v.* Jordan C. A. 7th Cir. Certiorari denied.

No. 95–9098. Gibbons *v.* Higgins et al. C. A. 7th Cir. Certiorari denied. Reported below: 73 F. 3d 364.

No. 95–9099. Ashford *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 168 Ill. 2d 494, 660 N. E. 2d 944.

No. 95–9100. STEWART *v.* GRAMLEY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 74 F. 3d 132.

No. 95–9101. CORDOVA-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 65 F. 3d 1552.

No. 95–9102. BENOIT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 154.

No. 95–9105. MAREK *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 1295.

No. 95–9106. NOURAIE *v.* WEST, SECRETARY OF THE ARMY. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 912.

No. 95–9107. LUCAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 12 Cal. 4th 415, 907 P. 2d 373.

No. 95–9108. OKPARAOCHA *v.* TACO BELL CORP. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 418.

No. 95–9109. BURGESS *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF NEW HAMPSHIRE ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 70 F. 3d 110.

No. 95–9110. KINNELL ET UX. *v.* CONVENIENT LOAN CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 77 F. 3d 492.

No. 95–9111. BOYD *v.* ARMSTRONG, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. C. A. 2d Cir. Certiorari denied. Reported below: 77 F. 3d 60.

No. 95–9114. BRIMAGE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 918 S. W. 2d 466.

No. 95–9115. SANDERS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 11 Cal. 4th 475, 905 P. 2d 420.

No. 95–9117. SOCKWELL *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 675 So. 2d 38.

No. 95–9122. DUNLAP *v.* HILL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–9125. Tyler et al. *v.* Ashcroft et al. C. A. 8th Cir. Certiorari denied. Reported below: 74 F. 3d 1244.

No. 95–9127. Gentry *v.* United Parcel Service, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 71 F. 3d 882.

No. 95–9128. Fink *v.* Marshall, Warden. C. A. 9th Cir. Certiorari denied.

No. 95–9129. Key *v.* Clarke et al. C. A. 4th Cir. Certiorari denied. Reported below: 77 F. 3d 469.

No. 95–9130. Klopp *v.* United States et al. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 945.

No. 95–9131. Johnson *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 911 P. 2d 918.

No. 95–9132. Jackson *v.* Kessler. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 176.

No. 95–9134. Jackson *v.* Peugh et al. C. A. 10th Cir. Certiorari denied. Reported below: 77 F. 3d 492.

No. 95–9135. McDonald *v.* Saxton. Super. Ct. Pa. Certiorari denied. Reported below: 448 Pa. Super. 662, 671 A. 2d 776.

No. 95–9136. Martins *v.* Charles Hayden Goodwill Inn School C. A. 1st Cir. Certiorari denied. Reported below: 77 F. 3d 460.

No. 95–9137. Kemp *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 185 Ariz. 52, 912 P. 2d 1281.

No. 95–9139. Matthews *v.* Martin, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 74 F. 3d 1232.

No. 95–9140. Schlicher *v.* Martin et al. C. A. 10th Cir. Certiorari denied. Reported below: 76 F. 3d 393.

No. 95–9141. Starr *v.* Metzer, Chairman, Virginia Parole Board. Sup. Ct. Va. Certiorari denied.

No. 95–9142. Castro *v.* Singletary, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 495.

No. 95–9143. FLORIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 78 F. 3d 580.

No. 95–9144. ERICKSON *v.* GORDON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 79 F. 3d 1159.

No. 95–9145. EMERY *v.* GALOSE. Sup. Ct. Ohio. Certiorari denied. Reported below: 74 Ohio St. 3d 1523, 660 N. E. 2d 742.

No. 95–9146. GARCIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 77 F. 3d 486.

No. 95–9147. SANDERS *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 79 F. 3d 1142.

No. 95–9148. SMALL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–9149. LUCKETTE *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied. Reported below: 906 S. W. 2d 663.

No. 95–9150. CONNOLLY *v.* WILLIAMS, CHAIRMAN, ILLINOIS PRISON REVIEW BOARD. C. A. 7th Cir. Certiorari denied.

No. 95–9151. CONVERTINO *v.* JABE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 371.

No. 95–9152. COOKUS *v.* LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 592.

No. 95–9153. ABDULLAH *v.* MILONAS. C. A. 2d Cir. Certiorari denied.

No. 95–9154. HASAN *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 74 F. 3d 1260.

No. 95–9155. BABA *v.* JAPAN TRAVEL BUREAU INTERNATIONAL, INC., ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–9156. BABA *v.* WARREN MANAGEMENT CONSULTANTS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 89 F. 3d 826.

No. 95–9157. HARRIS *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–9158. BARBERENA-JIMENEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 77 F. 3d 486.

No. 95–9160. BARONE *v.* FELDMEYER ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 95–9162. UNDER SEAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 74 F. 3d 526.

No. 95–9165. KUMAR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 82 F. 3d 407.

No. 95–9166. LEWIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 74 F. 3d 1247.

No. 95–9167. KNIGHTON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 912 P. 2d 878.

No. 95–9168. MORGAN *v.* NEVADA BOARD OF PRISON COMMISSIONERS ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1733.

No. 95–9169. ALLEN *v.* UNITED STATES;
No. 95–9196. SWIFT *v.* UNITED STATES; and
No. 95–9205. CIHAK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 76 F. 3d 1348.

No. 95–9170. POPEJOY ET AL. *v.* BOSTON POINTE CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 176.

No. 95–9171. SHERBONDY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 1281.

No. 95–9172. RUSSELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 76 F. 3d 808.

No. 95–9173. PENNINGTON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 913 P. 2d 1356.

No. 95–9174. SINGLETON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 596.

No. 95–9175. CURTIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 175.

No. 95–9176. WATSON *v.* GENERAL MOTORS CORP., ELECTRO-MOTIVE DIVISION. C. A. 7th Cir. Certiorari denied. Reported below: 73 F. 3d 365.

No. 95–9177. WILLIAMS *v.* IOWA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 74 F. 3d 1244.

No. 95–9178. GUNNELL *v.* LITTLEFIELD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–9179. DIXON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 221 App. Div. 2d 952, 634 N. Y. S. 2d 313.

No. 95–9181. GILES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 161.

No. 95–9182. MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 71 F. 3d 813.

No. 95–9183. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 177.

No. 95–9185. LASTER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–9186. JONES *v.* ASSOCIATED UNIVERSITIES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 71 F. 3d 406.

No. 95–9187. KRIVONAK *v.* BERKEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 65 F. 3d 162.

No. 95–9188. LONG *v.* SPARKMAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 422.

No. 95–9189. LEFEBRE *v.* CIRCUIT COURT OF WISCONSIN, LACROSSE COUNTY. Sup. Ct. Wis. Certiorari denied.

No. 95–9190. MACIEL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 275 Ill. App. 3d 1131, 692 N. E. 2d 874.

No. 95–9191. KINARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 78 F. 3d 580.

No. 95–9192. LOUIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 416.

No. 95–9193. PARKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 417.

No. 95–9194. SHIMP *v.* KEYCORP MORTGAGE, INC. Ct. App. Ohio, Portage County. Certiorari denied.

No. 95–9195. POULLARD *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 672 So. 2d 919.

No. 95–9197. CLECKNER *v.* BELL ATLANTIC-MARYLAND, INC. Ct. Sp. App. Md. Certiorari denied. Reported below: 106 Md. App. 770.

No. 95–9198. BOONE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 80 F. 3d 558.

No. 95–9199. ALTIMUS *v.* PERRY, SECRETARY OF DEFENSE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–9200. BORCSIK *v.* JOHNSON, DIRECTOR OF THE NEW JERSEY OFFICE OF ATTORNEY ETHICS. Sup. Ct. N. J. Certiorari denied.

No. 95–9201. BIERLEY *v.* WALTERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MERCER. C. A. 3d Cir. Certiorari denied.

No. 95–9202. RHINEHART *v.* MARSHALL. C. A. 9th Cir. Certiorari denied.

No. 95–9204. ALLEN *v.* CLARKE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–9206. ALVER *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 64 F. 3d 672.

No. 95–9207. DICKERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 77 F. 3d 774.

No. 95–9208. SEWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 480.

No. 95–9210. HINES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 944.

No. 95–9211. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 174.

No. 95–9212. HAWKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 348.

No. 95–9213. DAWSON *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 673 A. 2d 1186.

No. 95–9214. COTTEN *v.* GENERAL MOTORS FISHER-BODY DIVISION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 77 F. 3d 482.

No. 95–9215. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 156.

No. 95–9217. WRIGHT *v.* OHIO ADULT PAROLE AUTHORITY. Sup. Ct. Ohio. Certiorari denied. Reported below: 75 Ohio St. 3d 82, 661 N. E. 2d 728.

No. 95–9218. WHITING *v.* UTAH. Ct. App. Utah. Certiorari denied.

No. 95–9219. WALKER *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 88 N. Y. 2d 887, 668 N. E. 2d 433.

No. 95–9220. DIVETTA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 423.

No. 95–9223. IRWIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 73 F. 3d 1107.

No. 95–9224. JAMES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 78 F. 3d 851.

No. 95–9225. GEOGHEGAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 174.

No. 95–9226. GRAHAM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 943.

No. 95–9227. EBENHART *v.* COHEN ET AL. Sup. Ct. Vt. Certiorari denied. Reported below: 164 Vt. 652, 677 A. 2d 430.

No. 95–9228. BOWMAN *v.* BOWLING. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 160.

No. 95–9229. BREWER *v.* PUCKETT, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–9231. Robinson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 78 F. 3d 580.

No. 95–9232. Chinn *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 78 F. 3d 579.

No. 95–9233. Wilson *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 74 Ohio St. 3d 381, 659 N. E. 2d 292.

No. 95–9234. White *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1252.

No. 95–9236. Brahms-Garcia *v.* United States; and
No. 96–5050. Cisneros-Silva *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 170.

No. 95–9237. Lussier *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 75 F. 3d 40.

No. 95–9238. Medlock *v.* Office of Personnel Management. C. A. Fed. Cir. Certiorari denied. Reported below: 82 F. 3d 434.

No. 95–9239. Ruiz *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 73 F. 3d 949.

No. 95–9240. Suarez-Riascos *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 174.

No. 95–9241. Rivera *v.* Keane, Superintendent, Sing Sing Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 682.

No. 95–9242. Carter *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 41 Cal. App. 4th 683, 48 Cal. Rptr. 2d 726.

No. 95–9243. Spiva *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 419.

No. 95–9244. Brown *v.* Yount, Superintendent, Graham Correctional Center, et al. C. A. 7th Cir. Certiorari denied.

No. 95–9245. Shilling *v.* Cain, Warden, et al. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 414.

No. 95–9246. SEDDENS *v.* JONES, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 95–9247. SIERS *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–9248. SCOTT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 74 F. 3d 175.

No. 95–9249. PERRY *v.* MILLER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 414.

No. 95–9250. CAMILO MONTOYA *v.* STOCK, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 498.

No. 95–9251. MOSBY *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 413.

No. 95–9252. MESSICK *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–9254. MITCHELL *v.* SIMONET ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 79 F. 3d 1156.

No. 95–9255. YURTIS, AKA COAN *v.* JONES ET UX. Ct. App. Wash. Certiorari denied. Reported below: 79 Wash. App. 1024.

No. 95–9256. KREHNBRINK ET UX. *v.* MARYLAND DEPARTMENT OF EDUCATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 72 F. 3d 127.

No. 95–9257. KINSEY *v.* CLENNEY. Ct. Civ. App. Ala. Certiorari denied. Reported below: 681 So. 2d 657.

No. 95–9258. ARROYO JUSINO *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 106 F. 3d 421.

No. 95–9259. MORERA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 77 F. 3d 471.

No. 95–9260. ARTEAGA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 95–9262. ADESANYA *v.* PRUNTY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 334.

No. 95–9265. ADIGWU *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 74 F. 3d 1241.

No. 95–9266. GONZALES *v.* WRIGHT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 372.

No. 95–9267. GEORGE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 83 F. 3d 418.

No. 95–9268. HINES *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 919 S. W. 2d 573.

No. 95–9269. HARRIS *v.* GILLIS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–9270. ANDRADE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 174.

No. 95–9271. HAWKINS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 74 Ohio St. 3d 530, 660 N. E. 2d 454.

No. 95–9272. FELLS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 F. 3d 168.

No. 95–9273. HUDSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 95–9274. GULLETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 75 F. 3d 941.

No. 95–9275. NANCE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 323 Ark. 583, 918 S. W. 2d 114.

No. 95–9276. LOPEZ *v.* SCOTT. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–9277. EVANS *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 82 F. 3d 428.

No. 95–9278. GIRALDO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 80 F. 3d 667.

No. 95–9279. HELTON *v.* TURNER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 160.

No. 95–9280. QUINTERO-BARRAZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 1344.

No. 95–9281. MARBURY *v.* JABE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 76 F. 3d 379.

No. 95–9283. NGUYEN *v.* DEPARTMENT OF DEFENSE. C. A. 4th Cir. Certiorari denied. Reported below: 73 F. 3d 358.

No. 95–9284. WACKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 72 F. 3d 1453.

No. 95–9285. RIASCOS-SUAREZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 73 F. 3d 616.

No. 95–9286. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 79 F. 3d 1161.

No. 95–9287. PAGAN *v.* STEPANIK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 95–9288. BOWYER *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 659 N. E. 2d 270.

No. 95–9289. EQUILS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 79 F. 3d 1142.

No. 95–9290. GARDNER *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 95–9291. SIMS *v.* BUNNELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1154.

No. 95–9292. VANDERBECK *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 95–9293. COLEMAN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 148.

No. 95–9294. BEAGLES *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 78 F. 3d 605.

No. 95–9295. BROWDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 F. 3d 1144.

No. 95–9296. WORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 72 F. 3d 131.

No. 95–9297. REYNOLDS *v.* TELE-COMMUNICATIONS, INC. C. A. 10th Cir. Certiorari denied. Reported below: 77 F. 3d 493.

No. 95–9298. WEAVER *v.* WILLIAMS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 77 F. 3d 487.

No. 95–9299. BARNETT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 74 F. 3d 1224.

No. 95–9300. GARNETT *v.* SOBOL, COMMISSIONER, NEW YORK STATE DEPARTMENT OF EDUCATION. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 222 App. Div. 2d 850, 634 N. Y. S. 2d 882.

No. 95–9301. FULLER *v.* BOARD OF SELECTMEN FOR THE TOWN OF CANTON ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 37 F. 3d 1484.

No. 95–9303. LOWE-BEY *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 95–9304. JOHNSON *v.* ROSEMEYER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–9305. CANCIL *v.* FLORIDA DEPARTMENT OF STATE, DIVISION OF LICENSING. Sup. Ct. Fla. Certiorari denied. Reported below: 669 So. 2d 250.

No. 95–9306. MCKINNEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 398.

No. 95–9307. JONES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 80 F. 3d 436.

No. 95–9309. KOYNOK *v.* ESTATE OF KOYNOK ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 445 Pa. Super. 638, 664 A. 2d 1065.

No. 95–9310. LEWIS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 156.

No. 95–9311. JONES *v.* BAUSCH & LOMB, INC. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 681.

No. 95–9312. CAMPBELL *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 70 F. 3d 128.

No. 95–9313. ZU MIKE *v.* RENO, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 95–9315. WILLIAMS *v.* COUSIN-WILLIAMS. Ct. App. Neb. Certiorari denied. Reported below: 4 Neb. App. xxxv.

No. 95–9316. HERNANDO RAMIREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 79 F. 3d 298.

No. 95–9317. SKEET *v.* CITY OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 95–9318. RAMER *v.* NESS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 74 F. 3d 1250.

No. 95–9319. BENTLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 419.

No. 95–9321. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 77 F. 3d 491.

No. 95–9322. KLADE, AKA KLADY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1155.

No. 95–9324. REZAABADY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 82 F. 3d 424.

No. 95–9325. SANTANA-MOLINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 80 F. 3d 398.

No. 95–9326. BRINKLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 82 F. 3d 411.

No. 95–9327. RAGLAND *v.* HUNDLEY, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 79 F. 3d 702.

No. 95–9328. POLITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 F. 3d 429.

No. 95–9329. Swain *v.* District Court of Appeal of Florida, Third District, et al. Sup. Ct. Fla. Certiorari denied. Reported below: 675 So. 2d 929.

No. 95–9330. Young *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 1150.

No. 95–9331. Thomas *v.* Georgia State Board of Pardons and Paroles et al. C. A. 11th Cir. Certiorari denied.

No. 95–9332. Pugh *v.* Huffman. C. A. 5th Cir. Certiorari denied. Reported below: 83 F. 3d 418.

No. 95–9333. Harris *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 79 F. 3d 223.

No. 95–9334. Esparza *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 174.

No. 95–9337. Carr *v.* Louisiana. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 667 So. 2d 1238.

No. 95–9338. Thompson *v.* Thompson et al. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 95–9339. Ballard *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 95–9340. Benson et al. *v.* United States et al. C. A. 10th Cir. Certiorari denied. Reported below: 70 F. 3d 123.

No. 95–9342. Hester *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 79 F. 3d 1142.

No. 95–9343. Herrera-Rivera *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 82 F. 3d 429.

No. 95–9344. Espinosa-Sanchez *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 79 F. 3d 1136.

No. 95–9345. Howard *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 73 F. 3d 362.

No. 95–9346. Floyd *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 81 F. 3d 1517.

No. 95–9347. Dickey *v.* McMahan et al. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 1330.

No. 95–9349. HALL *v.* BROWNING, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 82 F. 3d 422.

No. 95–9350. MARION *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 40 Conn. App. 906, 668 N. E. 2d 401.

No. 95–9352. LARUE *v.* BLODGETT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 85 F. 3d 636.

No. 95–9353. LUSTY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 95–9354. MCFADDEN *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 469.

No. 95–9355. KIEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 435.

No. 95–9356. MARTIN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 95–9357. IRVING *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–9358. MAGOON *v.* TURNER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 79 F. 3d 1144.

No. 95–9359. JONES *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 479.

No. 95–9360. LUNA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 74 F. 3d 1228.

No. 95–9362. MONTOYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 310.

No. 95–9364. AGUILAR *v.* NEW MEXICO. Dist. Ct. N. M., Bernalillo County. Certiorari denied.

No. 95–9367. CASPER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 170.

No. 95–9368. Panton *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 942.

No. 95–9369. Seymour *v.* New Hampshire. Sup. Ct. N. H. Certiorari denied. Reported below: 140 N. H. 736, 673 A. 2d 786.

No. 95–9370. Roulette *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 75 F. 3d 418.

No. 95–9371. Chapman *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 76 F. 3d 393.

No. 95–9372. Givings *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 95–9374. Rodrigo Garcia *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 857.

No. 95–9375. Manning *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 79 F. 3d 212.

No. 95–9376. Brown *v.* Georgia Department of Corrections et al. C. A. 11th Cir. Certiorari denied.

No. 95–9377. Jefferson *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 77 F. 3d 464.

No. 95–9378. Canatella *v.* Carr, McClellan, Ingersoll, Thompson & Horn et al. C. A. 9th Cir. Certiorari denied.

No. 95–9379. Barnes *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1161.

No. 95–9380. Caldwell *v.* Tennessee. Sup. Ct. Tenn. Certiorari denied. Reported below: 917 S. W. 2d 662.

No. 95–9381. Hope *v.* District of Columbia Metropolitan Police Department. C. A. D. C. Cir. Certiorari denied.

No. 95–9383. Forbes *v.* Patrissi, Commissioner, Vermont Department of Corrections. C. A. 2d Cir. Certiorari denied.

No. 95–9384. Hill *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 76 F. 3d 122.

No. 95–9385. Teel *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 95–9387. Washington *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 81 F. 3d 1147.

No. 95–9388. Williams *v.* Oregon. Sup. Ct. Ore. Certiorari denied. Reported below: 322 Ore. 620, 912 P. 2d 364.

No. 95–9389. Bruce *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 78 F. 3d 1506.

No. 95–9390. Verbeck *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 122.

No. 95–9391. Brown *v.* Gunn et al. C. A. 4th Cir. Certiorari denied. Reported below: 74 F. 3d 1230.

No. 95–9392. Bowman *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division, et al. C. A. 5th Cir. Certiorari denied. Reported below: 79 F. 3d 1144.

No. 95–9393. Sprosty *v.* Buchler, Warden, et al. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 635.

No. 95–9394. Onitiri *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 942.

No. 95–9395. Roscoe *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 184 Ariz. 484, 910 P. 2d 635.

No. 95–9396. Buzea *v.* Stanhope Hotel. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 944.

No. 95–9397. Woods *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 75 F. 3d 1017.

No. 95–9399. Igbonwa *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 85 F. 3d 613.

No. 95–9400. Medina *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 11 Cal. 4th 694, 906 P. 2d 2.

No. 95–9401. Stevens *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 543 Pa. 204, 670 A. 2d 623.

No. 95–9402. Romano *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 909 P. 2d 92.

No. 95–9403. Perdue *v.* Kentucky. Sup. Ct. Ky. Certiorari denied. Reported below: 916 S. W. 2d 148.

No. 95–9404. Mejia-Uribe *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 75 F. 3d 395.

No. 95–9405. Markoff *v.* Markoff. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–9406. Young *v.* Jones, Commissioner, Alabama Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 496.

No. 95–9407. Meservy *v.* Meservy. Sup. Ct. Nev. Certiorari denied. Reported below: 111 Nev. 1724, 916 P. 2d 206.

No. 95–9408. Cooper *v.* Malone et al. C. A. 8th Cir. Certiorari denied.

No. 95–9409. Lennon *v.* Louisiana. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 661 So. 2d 1047.

No. 95–9410. Neal *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 78 F. 3d 901.

No. 95–9411. Palaimo *v.* Lutz et al. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 109.

No. 95–9412. Murphy *v.* Kelly, Superintendent, Attica Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 99 F. 3d 401.

No. 95–9413. Temple *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 78 F. 3d 581.

No. 95–9415. Young *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 171.

No. 95–9416. Weaver *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 222 App. Div. 2d 1046, 635 N. Y. S. 2d 861.

No. 95–9417. WEAVER *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 912 S. W. 2d 499.

No. 95–9418. PEREZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 79.

No. 95–9419. RODRIGUEZ *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 413.

No. 95–9421. SCHULTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 388.

No. 95–9422. TYLER *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 95–9423. CONCEPCION *v.* PUERTO RICO. Sup. Ct. P. R. Certiorari denied.

No. 95–9425. MARSH *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 196 Wis. 2d 649, 539 N. W. 2d 338.

No. 95–9426. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 82 F. 3d 241.

No. 95–9427. DENOGEAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 79 F. 3d 1010.

No. 95–9428. HAMM *v.* LATESSA, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 72 F. 3d 947.

No. 95–9429. PADILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1155.

No. 95–9430. KAUFMAN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 95–9431. MARSHALL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 68.

No. 95–9432. MEDINA-MORALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1164.

No. 95–9433. KRUEGER *v.* WOODS, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 83 F. 3d 419.

No. 95–9434. MITCHELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 82 F. 3d 146.

No. 95–9435. LEE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 82 F. 3d 407.

No. 95–9436. MCCARTHY *v.* KUPEC, WARDEN. Super. Ct. Conn., Tolland Jud. Dist. Certiorari denied.

No. 95–9437. STABILE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 82 F. 3d 407.

No. 95–9438. CRUZ-FERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 79 F. 3d 1160.

No. 95–9440. STAULA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 80 F. 3d 596.

No. 95–9442. ASKEW *v.* WEST, SECRETARY OF THE ARMY. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 160.

No. 95–9443. BARNES *v.* UNITED STATES; and
No. 96–5041. BARNES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 83 F. 3d 934.

No. 95–9444. GLASS *v.* DUCKWORTH, SUPERINTENDENT, INDIANA STATE REFORMATORY. C. A. 7th Cir. Certiorari denied.

No. 95–9446. DOTSON *v.* CALIFORNIA PUBLIC UTILITIES COMMISSION ET AL. Sup. Ct. Cal. Certiorari denied.

No. 95–9447. FLETCHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 74 F. 3d 49.

No. 95–9448. HOLT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 79 F. 3d 14.

No. 95–9449. DEES *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 916 S. W. 2d 287.

No. 95–9450. FALCISO *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 106 F. 3d 422.

No. 95–9451. GUICHARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 95–9452. FORTESCUE *v.* SIMPSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 70 F. 3d 111.

No. 95–9453. Gibson *v.* Bowersox, Superintendent, Potosi Correctional Center. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 372.

No. 95–9454. Garcia *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 74.

No. 95–9455. Hill *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 79 F. 3d 1477.

No. 95–9456. Gordon *v.* Colorado. Sup. Ct. Colo. Certiorari denied.

No. 95–9457. Harper *v.* United States District Court for the District of Kansas et al. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 426.

No. 95–9458. Dahler *v.* Meyer et al. C. A. 7th Cir. Certiorari denied.

No. 95–9459. Hanberry et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 79 F. 3d 1142.

No. 95–9460. Williams *v.* Hofbauer, Warden. C. A. 6th Cir. Certiorari denied.

No. 95–9462. Montgomery, aka Zulu X, aka Howard *v.* United States District Court for the District of South Carolina. C. A. 4th Cir. Certiorari denied. Reported below: 85 F. 3d 616.

No. 95–9464. Impola *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 81 F. 3d 165.

No. 95–9465. Cheren *v.* Fitch. Ct. App. Ohio, Summit County. Certiorari denied.

No. 95–9466. Walters *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 95–9467. Clarke *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1153.

No. 95–9468. Cotton *v.* Dorsey, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 81 F. 3d 172.

No. 95–9469. SMITH *v.* NATIONAL CORPORATION OF HOUSING PARTNERSHIPS. C. A. 7th Cir. Certiorari denied.

No. 95–9470. CALDWELL *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 875 S. W. 2d 7.

No. 95–9471. CHAPPELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 161.

No. 95–9472. CRUZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1168.

No. 95–9473. BERK *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 88 N. Y. 2d 257, 667 N. E. 2d 308.

No. 95–9474. AZEEZ *v.* DUNCIL, WARDEN. Sup. Ct. App. W. Va. Certiorari denied.

No. 95–9475. LONG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 77 F. 3d 1060.

No. 95–9476. MCDONALD *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 82 F. 3d 429.

No. 95–9477. MORAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 78 F. 3d 600.

No. 95–9478. NASH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 73 F. 3d 1470.

No. 95–9479. MELHORN *v.* UNITED STATES; and
No. 96–5398. ELLIOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 1304 and 82 F. 3d 989.

No. 95–9481. HOANG *v.* MERCURY INSURANCE CO. C. A. 9th Cir. Certiorari denied.

No. 95–9483. DOUGLAS *v.* MILLER, SUPERINTENDENT, INDIANA CORRECTIONAL INDUSTRIAL COMPLEX. C. A. 7th Cir. Certiorari denied. Reported below: 81 F. 3d 163.

No. 95–9484. HAMPTON *v.* BROWN ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–9486. GARNER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 43 M. J. 435.

No. 95–9487. TAYLOR *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 669 So. 2d 364.

No. 95–9488. CARTER *v.* BOWLEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–9489. BARTON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 95–9490. BREWINGTON *v.* WOODARD, SUPERINTENDENT, JOHNSTON CORRECTIONAL CENTER. C. A. 4th Cir. Certiorari denied. Reported below: 77 F. 3d 467.

No. 95–9491. RODRIGUEZ *v.* UNITED STATES; and
No. 96–5097. HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 431.

No. 95–9492. BOLTON *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 156.

No. 95–9493. BURGESS *v.* NITZSCHKE. Dist. Ct., Town of Durham, N. H. Certiorari denied.

No. 95–9494. BRYANT *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 95–9495. COTTON *v.* HILBIG ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 477.

No. 95–9496. BARTH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 66 F. 3d 309.

No. 95–9497. FERGURSON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 274 Ill. App. 3d 1124, 691 N. E. 2d 1206.

No. 95–9498. HOSNA ET AL. *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 80 F. 3d 298.

No. 95–9499. HENAO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 681.

No. 95–9500. WIMBERLY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 673.

No. 95–9501. CONTRERAS ET AL. *v.* HAWK, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 77 F. 3d 484.

No. 96–3. TEXAS *v.* SIERRA CLUB ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 155.

No. 96–4. ROWINSKY, NEXT FRIEND OF DOE ET AL., HER MINOR CHILDREN *v.* BRYAN INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 80 F. 3d 1006.

No. 96–5. PANZER ET AL. *v.* NELKIN ET AL. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 96–6. WILKINSON & MONAGHAN ET AL. *v.* HILLCREST HEALTHCARE CORP. ET AL. Ct. App. Okla. Certiorari denied. Reported below: 914 P. 2d 1060.

No. 96–7. WHEELER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 171.

No. 96–8. FONTAO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 423.

No. 96–10. IN RE GESCHKE ET UX. C. A. 7th Cir. Certiorari denied. Reported below: 72 F. 3d 1347.

No. 96–12. HUNTER, ON BEHALF OF HUNTER ET AL. *v.* KNOLL RIG & EQUIPMENT MANUFACTURING CO., LTD., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 70 F. 3d 803.

No. 96–13. LEE ET AL. *v.* GOODMAN. C. A. 5th Cir. Certiorari denied. Reported below: 78 F. 3d 1007.

No. 96–14. ANDRICK ET UX. *v.* POOL ENERGY SERVICES CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 480.

No. 96–15. SMITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 275 Ill. App. 3d 1133, 692 N. E. 2d 875.

No. 96–16. WUDTKE ET VIR *v.* CHILDERS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 391.

No. 96–18. NEELY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 376.

No. 96–19. Vencil, Trustee of the Trust of White et ux., et al. *v.* Quigley, President Judge, Court of Common Pleas, 41st Judicial District, Juniata and Perry Counties, Orphan's Court Division. Sup. Ct. Pa. Certiorari denied.

No. 96–21. Gravel *v.* Gregoire, Attorney General of Washington. Sup. Ct. Wash. Certiorari denied. Reported below: 128 Wash. 2d 707, 911 P. 2d 389.

No. 96–22. Armstrong et al. *v.* California. App. Dept., Super. Ct. Cal., County of Los Angeles. Certiorari denied.

No. 96–23. Amato et al. *v.* City of Richmond et al. C. A. 4th Cir. Certiorari denied. Reported below: 78 F. 3d 578.

No. 96–24. Grosz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 76 F. 3d 1318.

No. 96–26. Zientek *v.* New York et al. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 222 App. Div. 2d 1041, 635 N. Y. S. 2d 893.

No. 96–27. Levin *v.* Maya Construction. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 1395.

No. 96–28. Rivers *v.* Federal Express Corp. C. A. 6th Cir. Certiorari denied.

No. 96–29. Northern States Power Co. et al. *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 73 F. 3d 764.

No. 96–30. Tinch et al. *v.* City of Dayton et al. C. A. 6th Cir. Certiorari denied. Reported below: 77 F. 3d 483.

No. 96–32. Manning et al. *v.* City of Chicago et al. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 276 Ill. App. 3d 260, 657 N. E. 2d 1123.

No. 96–33. Chodos *v.* Shop Television Network, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1154.

No. 96–34. Ratcliff et al. *v.* Daniel et al. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 432.

No. 96–35. Dooley, Individually and as Administratrix of the Estate of Dooley, Deceased, et al. *v.* International Safety Instruments, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 432.

No. 96–36. Metropolitan Government of Nashville and Davidson County *v.* Harrison. C. A. 6th Cir. Certiorari denied. Reported below: 80 F. 3d 1107.

No. 96–37. Rees et al. *v.* Texas. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 909 S. W. 2d 264.

No. 96–38. Dean *v.* Trans World Airlines, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 72 F. 3d 754.

No. 96–39. Interoceanica Corp. et al. *v.* Ball et al. C. A. 2d Cir. Certiorari denied. Reported below: 71 F. 3d 73.

No. 96–41. Harris et ux. *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 414.

No. 96–42. Furtick *v.* Shults et al. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 664 So. 2d 288.

No. 96–45. Coffey *v.* Winske et al. C. A. 1st Cir. Certiorari denied. Reported below: 81 F. 3d 147.

No. 96–46. Zielinski et al. *v.* Schmalbeck et al. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 269 Ill. App. 3d 572, 646 N. E. 2d 655.

No. 96–47. Fleenor *v.* Hewitt Soap Co. et al. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 48.

No. 96–48. Lake at Las Vegas Investors Group, Inc. *v.* Botaba Realty Co. et al. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 593.

No. 96–49. Estate of Buice, Deceased, et al. *v.* United States Fidelity & Guaranty Insurance Co. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 414.

No. 96–50. Concourse Nursing Home *v.* Perales, Commissioner, New York State Department of Social Serivices, et al. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 219 App. Div. 2d 451, 631 N. Y. S. 2d 156.

No. 96–51. ADAMS ET AL. *v.* BURLINGTON NORTHERN RAILROAD CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 80 F. 3d 1377.

No. 96–52. REECE *v.* HOUSTON LIGHTING & POWER CO. C. A. 5th Cir. Certiorari denied. Reported below: 79 F. 3d 485.

No. 96–55. BAYSHORE NATIONAL BANK OF LA PORTE *v.* EVANS ET UX. C. A. 5th Cir. Certiorari denied. Reported below: 79 F. 3d 1143.

No. 96–56. PURE WATERS, INC. *v.* MICHIGAN DEPARTMENT OF NATURAL RESOURCES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 418.

No. 96–57. SCHIFFER *v.* TARRYTOWN BOAT CLUB, INC., ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 219 App. Div. 2d 704, 631 N. Y. S. 2d 435.

No. 96–58. HARRIS *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 77 F. 3d 66.

No. 96–59. CAZIER *v.* NATIONSBANC MORTGAGE CORP., FKA KEYCORP MORTGAGE INC. ET AL. Ct. App. Idaho. Certiorari denied. Reported below: 127 Idaho 879, 908 P. 2d 572.

No. 96–62. VOYTEK *v.* UNIVERSITY OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 77 F. 3d 491.

No. 96–64. DI LAURO ET UX. *v.* VER STRATE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 74 F. 3d 1226.

No. 96–65. GRUMMAN TECHNICAL SERVICES, INC., ET AL. *v.* ESTATE OF ISHEE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 434.

No. 96–67. SAATHOFF *v.* WHELAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 169.

No. 96–69. THOMPSON *v.* NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 78 F. 3d 604.

No. 96–71. PHILADELPHIA TRIBUNE CO. ET AL. *v.* BROWN. Super. Ct. Pa. Certiorari denied. Reported below: 447 Pa. Super. 52, 668 A. 2d 159.

No. 96–72. City of Jasper *v.* Jasper Civil Service Board. Ct. Civ. App. Ala. Certiorari denied. Reported below: 677 So. 2d 761.

No. 96–74. Blue Cross & Blue Shield of Ohio et al. *v.* Schachner. C. A. 6th Cir. Certiorari denied. Reported below: 77 F. 3d 889.

No. 96–75. Singleton et al. *v.* Guangzhou Ocean Shipping Co. C. A. 5th Cir. Certiorari denied. Reported below: 79 F. 3d 26.

No. 96–76. Swisher *v.* Texas State Bar. Sup. Ct. Tex. Certiorari denied.

No. 96–77. Morgan et al. *v.* Texas. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 906 S. W. 2d 620.

No. 96–78. Spiegel *v.* State Farm Fire & Casualty Co. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 277 Ill. App. 3d 340, 660 N. E. 2d 200.

No. 96–80. Garcia *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 44 M. J. 27.

No. 96–81. Rennick et al. *v.* Option Care, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 77 F. 3d 309.

No. 96–82. Omnitrition International, Inc., et al. *v.* Webster et al. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 776.

No. 96–85. McCracken *v.* Coshocton County et al. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 418.

No. 96–87. Moody *v.* Alabama Department of Education et al. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 498.

No. 96–88. Sayco Ltd. *v.* Dalton, Secretary of the Navy. C. A. Fed. Cir. Certiorari denied. Reported below: 86 F. 3d 1173.

No. 96–89. United States ex rel. Hagood *v.* Sonoma County Water Agency. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 1465.

No. 96–92. Wolf *v.* Buss America, Inc. C. A. 7th Cir. Certiorari denied. Reported below: 77 F. 3d 914.

No. 96–94. Brown's Furniture, Inc. *v.* Zehnder, Director, Illinois Department of Revenue, et al. Sup. Ct. Ill. Certiorari denied. Reported below: 171 Ill. 2d 410, 665 N. E. 2d 795.

No. 96–95. Dinkins, Personal Representative of the Estate of Dinkins, Deceased *v.* Hutzel Hospital et al. C. A. 6th Cir. Certiorari denied. Reported below: 76 F. 3d 378.

No. 96–96. Wyshak *v.* American Savings Bank, F. A., et al. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 596.

No. 96–97. Central Regional School District *v.* M. C. et al., on Behalf of Their Son, J. C. C. A. 3d Cir. Certiorari denied. Reported below: 81 F. 3d 389.

No. 96–99. Dahl et al. *v.* Charles Schwab & Co., Inc. Sup. Ct. Minn. Certiorari denied. Reported below: 545 N. W. 2d 918.

No. 96–101. Ben Yahweh et al. *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 72 F. 3d 1518.

No. 96–103. Hood *v.* Kentucky. Ct. App. Ky. Certiorari denied.

No. 96–104. Holt *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 675 A. 2d 474.

No. 96–105. Studio Art Theatre of Evansville, Inc., et al. *v.* City of Evansville, Indiana, et al. C. A. 7th Cir. Certiorari denied. Reported below: 76 F. 3d 128.

No. 96–107. Froeman *v.* Maryland. Cir. Ct. Baltimore County, Md. Certiorari denied.

No. 96–108. Huston *v.* Tennessee Board of Regents et al. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 422.

No. 96–114. Gallego *v.* Service Lloyds Insurance Co. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 96–115. City of East Palo Alto et al. *v.* Hazzard. C. A. 9th Cir. Certiorari denied. Reported below: 74 F. 3d 1245.

No. 96–117. Maxwell et al. *v.* Samson Resources Co. Ct. App. Okla. Certiorari denied.

No. 96–118. Hill *v.* Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 422 Mass. 147, 661 N. E. 2d 1285.

No. 96–120. Veneklase et al. *v.* City of Fargo et al. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 1264.

No. 96–121. Smith *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 81 F. 3d 1147.

No. 96–122. Dunworth *v.* Office of Personnel Management. C. A. Fed. Cir. Certiorari denied. Reported below: 79 F. 3d 1167.

No. 96–124. American Broadcasting Cos., Inc., et al. *v.* BankAtlantic Financial Corp. et al. C. A. 11th Cir. Certiorari denied. Reported below: 85 F. 3d 1508.

No. 96–125. Lynnbrook Farms *v.* SmithKline Beecham Corp. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 620.

No. 96–127. Greene *v.* City of Montgomery. Ct. Crim. App. Ala. Certiorari denied. Reported below: 677 So. 2d 794.

No. 96–128. Slathar *v.* Sather Trucking Corp. et al. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 415.

No. 96–129. Brodnicki *v.* City of Omaha, Nebraska, et al. C. A. 8th Cir. Certiorari denied. Reported below: 75 F. 3d 1261.

No. 96–130. Antonio Santiago, aka Gomez Hernandez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 390.

No. 96–131. Ozuna Galan *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 639.

No. 96–132. Bolt *v.* Ptarmigan Co., Inc. Sup. Ct. Alaska. Certiorari denied. Reported below: 906 P. 2d 1357.

No. 96–133. Wood *v.* County of San Mateo et al. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 96–134. Giffler *v.* Abel et al. C. A. 3d Cir. Certiorari denied. Reported below: 72 F. 3d 122.

No. 96–136. Abele Associates *v.* Allegheny County Board of Property Assessment, Appeals and Review. Commw. Ct. Pa. Certiorari denied. Reported below: 657 A. 2d 533.

No. 96–138. DeRewal *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 82 F. 3d 407.

No. 96–139. Castillo *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 1480.

No. 96–142. Hauert *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 838.

No. 96–143. Village of Westhaven et al. *v.* Creek. C. A. 7th Cir. Certiorari denied. Reported below: 80 F. 3d 186.

No. 96–144. Narumanchi *v.* Abdelsayed. App. Ct. Conn. Certiorari denied. Reported below: 39 Conn. App. 778, 668 A. 2d 378.

No. 96–145. United States ex rel. Paul *v.* Parsons, Brinkerhoff, Quade & Douglas, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 624.

No. 96–147. Balasubramani *v.* Merrill Lynch, Pierce, Fenner & Smith, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 844.

No. 96–148. Metro Industries, Inc. *v.* Sammi Corp. et al. C. A. 9th Cir. Certiorari denied. Reported below: 82 F. 3d 839.

No. 96–149. Morris *v.* United States; and

No. 96–5429. Gardner *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 80 F. 3d 1151.

No. 96–150. Schall *v.* United States Postal Service. C. A. Fed. Cir. Certiorari denied. Reported below: 73 F. 3d 341.

No. 96–151. Brunson *v.* Los Angeles County Superior Court (California, Real Party in Interest). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–153. Scottish Heritable Trust, PLC, et al. *v.* Peat Marwick Main & Co. et al. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 606.

No. 96–154. Church of the Lord Jesus Christ of the Apostolic Faith et al. *v.* Shelton et al. Super. Ct. Pa. Certiorari denied. Reported below: 449 Pa. Super. 692, 673 A. 2d 398.

No. 96–155. Harris et ux. *v.* City of Port Huron. Ct. App. Mich. Certiorari denied.

No. 96–158. St. Hilaire et al. *v.* Maine Real Estate Commission. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 675 A. 2d 956.

No. 96–159. Williams *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 96–161. Cornish *v.* District of Columbia Board on Professional Responsibility. Ct. App. D. C. Certiorari denied.

No. 96–162. Elliott *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 82 F. 3d 421.

No. 96–163. Dalis *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 96–164. Sea Gull Lighting, Inc. *v.* Hydramatic Packing Co., Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 83 F. 3d 1390.

No. 96–165. Ramiro Muniz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 79 F. 3d 413.

No. 96–166. Kahre-Richardes Family Foundation, Inc., et al. *v.* Village of Baldwinsville et al. C. A. 2d Cir. Certiorari denied.

No. 96–169. Andrade et al. *v.* City of Burlingame et al. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1153.

No. 96–170. Pipola *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 83 F. 3d 556.

No. 96–171. NELSON *v.* NELSON, AKA MARTIN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 594.

No. 96–173. GRIFFIN ET AL. *v.* BOX ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 625.

No. 96–175. LORY, ADMINISTRATRIX OF THE ESTATE OF BARR, DECEASED, ET AL. *v.* CITY OF PHILADELPHIA. Sup. Ct. Pa. Certiorari denied. Reported below: 544 Pa. 38, 674 A. 2d 673.

No. 96–177. SINGLETON *v.* CHRIST THE SERVANT EVANGELICAL LUTHERAN CHURCH ET AL.; and OLSON *v.* LUTHER MEMORIAL CHURCH ET AL. Ct. App. Minn. Certiorari denied. Reported below: 541 N. W. 2d 606 (first judgment).

No. 96–178. EDGAR *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 82 F. 3d 499.

No. 96–179. GREAT WESTERN BANK *v.* KAPSIMALIS ET AL. Ct. App. Ariz. Certiorari denied.

No. 96–181. ALLRED *v.* A. L. L. ET AL. Ct. App. Kan. Certiorari denied. Reported below: 22 Kan. App. 2d 119, 912 P. 2d 761.

No. 96–182. AMERICAN DEPOSIT CORP. ET AL. *v.* SCHACHT, INDIVIDUALLY AND AS ILLINOIS ACTING DIRECTOR OF INSURANCE. C. A. 7th Cir. Certiorari denied. Reported below: 84 F. 3d 834.

No. 96–183. DOLIHITE, INDIVIDUALLY AND AS FATHER AND NEXT FRIEND OF DOLIHITE, ET AL. *v.* KING ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1027.

No. 96–187. BOWLIN *v.* MEASE, SHERIFF, STONE COUNTY. C. A. 8th Cir. Certiorari denied. Reported below: 74 F. 3d 1243.

No. 96–190. HALL *v.* BENET-MELENDEZ. Ct. App. P. R. Certiorari denied.

No. 96–191. METT ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 65 F. 3d 1531.

No. 96–192. RAMSEY *v.* COLONIAL LIFE INSURANCE COMPANY OF AMERICA, DBA CHUBB LIFEAMERICA. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 625.

No. 96–196. JA-RU *v.* CITY OF NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 88 N. Y. 2d 163, 666 N. E. 2d 537.

No. 96–198. KOSISKY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 447 Pa. Super. 629, 668 A. 2d 1192.

No. 96–199. PILOT AIR FREIGHT CORP. ET AL. *v.* JELLICO, DBA JELLICO STUDIO OF WESTERN ART. Dist. Ct., City and County of Denver, Colo. Certiorari denied.

No. 96–206. ONEY *v.* NENNIG. Ct. App. Wis. Certiorari denied. Reported below: 197 Wis. 2d 954, 543 N. W. 2d 867.

No. 96–208. KLEIN *v.* COLLARD & ROE, INC. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 941.

No. 96–211. TAYLOR *v.* MEACHAM ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 1556.

No. 96–212. IN RE SMITH. C. A. 10th Cir. Certiorari denied. Reported below: 76 F. 3d 335.

No. 96–213. LOPREATO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 83 F. 3d 571.

No. 96–214. SHARP *v.* MILLER ET AL. Ct. App. N. C. Certiorari denied. Reported below: 121 N. C. App. 616, 468 S. E. 2d 799.

No. 96–218. SHUMATE *v.* NATIONSBANK. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 150.

No. 96–220. ALLEN *v.* UNISON TRANSFORMER SERVICES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 77 F. 3d 461.

No. 96–221. FOWLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 85 F. 3d 617.

No. 96–223. JONES *v.* ATTORNEY GRIEVANCE COMMISSION OF MARYLAND. Ct. App. Md. Certiorari denied.

No. 96–224. FINIZIE *v.* CITY OF BRIDGEPORT. Sup. Ct. Conn. Certiorari denied. Reported below: 237 Conn. 909, 675 A. 2d 456.

No. 96–226. ANDERSON *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 675 A. 2d 943.

No. 96–227. FRASER, EXECUTRIX OF THE ESTATE OF FRASER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 83 F. 3d 591.

No. 96–232. DUBIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 77 F. 3d 490.

No. 96–239. RAMIREZ ET AL. *v.* CITY OF WICHITA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 78 F. 3d 597.

No. 96–241. LOPEZ ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 F. 3d 1032.

No. 96–242. ALT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 779.

No. 96–251. VEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 171.

No. 96–255. MACDONALD *v.* DELAWARE COUNTY BOARD OF SUPERVISORS. C. A. 2d Cir. Certiorari denied. Reported below: 80 F. 3d 42.

No. 96–256. DALTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1255.

No. 96–257. SIMMONS *v.* WETHERALL ET AL. App. Ct. Conn. Certiorari denied.

No. 96–260. MANN *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 74 F. 3d 1242.

No. 96–266. COLLINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 78 F. 3d 1021.

No. 96–274. ACTY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 77 F. 3d 1054.

No. 96–277. RAGLAND ET AL. *v.* SMS FINANCIAL, L. L. C. Ct. App. Okla. Certiorari denied. Reported below: 918 P. 2d 400.

No. 96–281. GUTSTEIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1162.

No. 96–283. DEE *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 82 F. 3d 403.

No. 96–285. TAYLOR *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 682 So. 2d 526.

No. 96–293. JEONG KYO LIM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–304. DENBICARE U. S. A., INC., ET AL. *v.* TOYS "R" US, INC. C. A. 9th Cir. Certiorari denied. Reported below: 84 F. 3d 1143.

No. 96–310. CASTANEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 470.

No. 96–327. SMITH *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 40 Conn. App. 789, 673 A. 2d 1149.

No. 96–5001. REED *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 13 Cal. 4th 217, 914 P. 2d 184.

No. 96–5002. SESSOMS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 342 N. C. 892, 467 S. E. 2d 243.

No. 96–5003. RICE *v.* WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 77 F. 3d 1138.

No. 96–5004. OAKS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 169 Ill. 2d 409, 662 N. E. 2d 1328.

No. 96–5005. RUFF *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 79 F. 3d 123.

No. 96–5006. STANLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 162.

No. 96–5007. SLATER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 162.

No. 96–5008. DOYLE *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 451 Mich. 93, 545 N. W. 2d 627.

No. 96–5009. REYES *v.* STANDARD MORTGAGE CO., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 594.

No. 96–5010. Rogers *v.* White, Superintendent, State Correctional Institution at Pittsburgh, et al. C. A. 3d Cir. Certiorari denied.

No. 96–5011. Stokes *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 448 Pa. Super. 657, 671 A. 2d 773.

No. 96–5012. Roberson *v.* Franklin et al. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 623.

No. 96–5013. Storey *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 96–5014. Sallee *v.* Sherakas et al. C. A. 3d Cir. Certiorari denied.

No. 96–5016. Hamilton *v.* Schriro, Director, Missouri Department of Corrections, et al. C. A. 8th Cir. Certiorari denied. Reported below: 74 F. 3d 1545.

No. 96–5018. Maxie *v.* Hamilton et al. C. A. 9th Cir. Certiorari denied. Reported below: 82 F. 3d 422.

No. 96–5019. Murray *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 184 Ariz. 9, 906 P. 2d 542.

No. 96–5020. Mitchell *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 162.

No. 96–5021. Jones *v.* Washington, Director, Illinois Department of Corrections. C. A. 7th Cir. Certiorari denied.

No. 96–5022. Leigh *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 78 F. 3d 580.

No. 96–5023. Maxie *v.* County of Los Angeles et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–5024. McGee *v.* Ieyoub, Attorney General of Louisiana, et al. C. A. 5th Cir. Certiorari denied.

No. 96–5026. Laszczynski *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 96–5027. Jenner *v.* Class, Warden, et al. C. A. 8th Cir. Certiorari denied. Reported below: 79 F. 3d 736.

No. 96–5028. KNAUB *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 171.

No. 96–5029. GUTIERREZ-MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 83 F. 3d 419.

No. 96–5031. MICHAEL *v.* ZERVAKOS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 77 F. 3d 469.

No. 96–5032. MOORE *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 171 Ill. 2d 74, 662 N. E. 2d 1215.

No. 96–5033. KIRKLAND *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 342 N. C. 891, 467 S. E. 2d 242.

No. 96–5035. WINNICKI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 85 F. 3d 630.

No. 96–5036. WELLS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–5037. VOGT *v.* CHURCHILL ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 81 F. 3d 147.

No. 96–5039. BROOKINS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–5040. CASTILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1251.

No. 96–5042. ARTHUR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 85 F. 3d 613.

No. 96–5043. CHANDLER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 342 N. C. 742, 467 S. E. 2d 636.

No. 96–5044. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 1499.

No. 96–5045. BARR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 681.

No. 96–5046. Bounds *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 171 Ill. 2d 1, 662 N. E. 2d 1168.

No. 96–5048. Romer *v.* Keane, Superintendent, Sing Sing Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 96–5049. Haynes *v.* Compton, Warden, et al. C. A. 6th Cir. Certiorari denied.

No. 96–5051. Hodrick *v.* United States; and
No. 96–5157. Sparks *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 171.

No. 96–5053. Souvannarath *v.* Minnesota. Sup. Ct. Minn. Certiorari denied. Reported below: 545 N. W. 2d 30.

No. 96–5054. Archer *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 673 So. 2d 17.

No. 96–5055. Gould *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1719.

No. 96–5056. Hernandez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 171.

No. 96–5057. Tyler et al. *v.* Carnahan, Governor of Missouri, et al. (two judgments). C. A. 8th Cir. Certiorari denied.

No. 96–5058. Barber et ux. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 80 F. 3d 964.

No. 96–5059. Abandy *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 86 F. 3d 1158.

No. 96–5060. Gough *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 74 F. 3d 1247.

No. 96–5061. Boulden *v.* Commissioner of Internal Revenue. C. A. 4th Cir. Certiorari denied. Reported below: 77 F. 3d 467.

No. 96–5062. Anderson *v.* Fischbach & Moore, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 621.

No. 96–5063. Middleton *v.* Moore, Director, South Carolina Department of Corrections, et al. C. A. 4th Cir. Certiorari denied. Reported below: 77 F. 3d 469.

No. 96–5065. King *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 96–5066. Leonard *v.* Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 422 Mass. 504, 663 N. E. 2d 828.

No. 96–5067. Matthews *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 83 F. 3d 420.

No. 96–5068. Adams *v.* Brown & Williamson Tobacco Corp. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 436.

No. 96–5069. Boccella *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 85 F. 3d 613.

No. 96–5070. Williams *v.* Netherland, Warden. Sup. Ct. Va. Certiorari denied.

No. 96–5071. Woodard *v.* United States. Ct. App. D. C. Certiorari denied.

No. 96–5072. Tlaga *v.* Reno, Attorney General. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 176.

No. 96–5073. Claywell *v.* Georgia. Ct. App. Ga. Certiorari denied. Reported below: 219 Ga. App. XXVI.

No. 96–5074. Clay *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 96–5075. Basey *v.* Herklotz et al. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 477.

No. 96–5076. Thomas *v.* Evans et al. C. A. 11th Cir. Certiorari denied.

No. 96–5077. Whitehead *v.* Washington Post et al. C. A. D. C. Cir. Certiorari denied.

No. 96–5078. Peagler *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 682 So. 2d 526.

No. 96–5079. Ray *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 71 F. 3d 881.

No. 96–5080. SANDERS *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 165 Vt. 638, 678 A. 2d 460.

No. 96–5081. STEWART *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 427.

No. 96–5082. SANCHEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 81 F. 3d 9.

No. 96–5083. HOFF *v.* WILSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 73 F. 3d 357.

No. 96–5084. GREEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 152.

No. 96–5085. GALOWSKI *v.* BERGE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 78 F. 3d 1176.

No. 96–5086. DWORZANSKI *v.* DWORZANSKI. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 271 Ill. App. 3d 1135, 688 N. E. 2d 150.

No. 96–5087. PETERSON *v.* WILLIAMS, SUPERINTENDENT, GOWANDA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 85 F. 3d 39.

No. 96–5088. TORRES SERRANO *v.* MARSHALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 594.

No. 96–5089. SIMMONS *v.* BIENVENU ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 81 F. 3d 173.

No. 96–5090. BOATENG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 170.

No. 96–5091. PHILLIPS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 76 F. 3d 393.

No. 96–5092. PHELPS ET UX. *v.* DENTON COUNTY SHERIFF ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 83 F. 3d 418.

No. 96–5093. BEST *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 342 N. C. 502, 467 S. E. 2d 45.

No. 96–5094. BAKER *v.* RUNYON, POSTMASTER GENERAL, ET AL. C. A. 8th Cir. Certiorari denied.

No. 96–5095. DEMAREY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 161.

No. 96–5096. OLIVER *v.* MAZURKIEWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–5098. HICKMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 85 F. 3d 617.

No. 96–5099. DILLINGHAM *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 96–5100. DUNBAR *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–5101. BAUCUM *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 66 F. 3d 362.

No. 96–5102. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1169.

No. 96–5103. JACKSON *v.* TAMMINGA. C. A. 6th Cir. Certiorari denied.

No. 96–5104. MCCARTHY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 96–5105. MCCARTHY *v.* KUPEC, WARDEN. Super. Ct. Conn., Tolland Jud. Dist. Certiorari denied.

No. 96–5106. NEWPORT *v.* MICHELIN AIRCRAFT TIRE, AKA MICHELIN TIRE CORP. C. A. 8th Cir. Certiorari denied. Reported below: 73 F. 3d 366.

No. 96–5107. ISAACS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 659 N. E. 2d 1036.

No. 96–5108. NOWACZYK *v.* NEW HAMPSHIRE ET AL. C. A. 1st Cir. Certiorari denied.

No. 96–5109. LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 96–5110. Moats *v.* White, Warden. C. A. 11th Cir. Certiorari denied.

No. 96–5111. Marks *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 85 F. 3d 396.

No. 96–5112. Munson *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 171 Ill. 2d 158, 662 N. E. 2d 1265.

No. 96–5113. Mejorado-Soto *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 73 F. 3d 363.

No. 96–5114. Noltimier *v.* Minnesota et al. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 589.

No. 96–5115. Kirby *v.* Davis, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 96–5116. Kashannejad *v.* Gomez, Director, California Department of Corrections. C. A. 9th Cir. Certiorari denied.

No. 96–5117. Mains *v.* Hall et al. C. A. 1st Cir. Certiorari denied. Reported below: 75 F. 3d 10.

No. 96–5118. Johnson *v.* Singletary, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 96–5119. Weber *v.* Erickson, Warden. C. A. 8th Cir. Certiorari denied.

No. 96–5121. Leaphart *v.* Peterson et al. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 418.

No. 96–5122. Ayeboua *v.* District of Columbia et al. C. A. D. C. Cir. Certiorari denied.

No. 96–5123. Smith *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 436.

No. 96–5125. Rodriquez *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 543 Pa. 651, 674 A. 2d 225.

No. 96–5126. Schmidt et ux. *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 72 F. 3d 139.

No. 96–5127. BOYD *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 915 P. 2d 922.

No. 96–5129. HEISTAND *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 96–5130. WALTON *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 78 F. 3d 604.

No. 96–5131. SMITH *v.* BECKER ET AL. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 96–5132. BROWN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 267 Ill. App. 3d 1073, 684 N. E. 2d 1119.

No. 96–5133. BLANDINO *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 352, 914 P. 2d 624.

No. 96–5135. BALCAZAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 F. 3d 1143.

No. 96–5137. THOMAS *v.* ALABAMA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1252.

No. 96–5138. AMITIN *v.* MARYLAND DEPARTMENT OF SOCIAL SERVICES. Ct. Sp. App. Md. Certiorari denied. Reported below: 107 Md. App. 206, 667 A. 2d 931.

No. 96–5140. BOWMAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–5141. GOMEZ *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 74 F. 3d 967.

No. 96–5142. HAYES *v.* CORRECTION MANAGEMENT AFFILIATES, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 73 F. 3d 373.

No. 96–5143. HERVEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 419.

No. 96–5144. MILLS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 427.

No. 96–5145. KEESEE, AKA MURPHY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 82 F. 3d 407.

No. 96–5146. MINARIK *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 447 Pa. Super. 631, 668 A. 2d 1194.

No. 96–5147. RAYFORD *v.* MORGAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 96–5148. SEGLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 413.

No. 96–5149. RUTHERFORD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 96–5151. BAZEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 80 F. 3d 1140.

No. 96–5152. CHILDS *v.* OHIO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 72 F. 3d 129.

No. 96–5153. WELLS *v.* ZENT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 423.

No. 96–5154. THORNE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 96–5155. TRIPATI *v.* ARIZONA (two judgments). Sup. Ct. Ariz. Certiorari denied.

No. 96–5156. REED *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 80 F. 3d 1419.

No. 96–5158. BROWN *v.* MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 148.

No. 96–5159. FIELDS *v.* AMERICAN EXPRESS CO. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 435.

No. 96–5160. DORAN *v.* MCGINNIS, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied.

No. 96–5161. FLATTUM *v.* BAKER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 169.

No. 96–5162. RAMIREZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 681.

No. 96–5163. ADAMS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied.

No. 96–5165. SHELTON *v.* GUDMANSON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 82 F. 3d 420.

No. 96–5166. SMALLWOOD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 73 F. 3d 1343.

No. 96–5167. SCOTT *v.* TANSY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 426.

No. 96–5168. ISHIKAWA *v.* CITY OF NEW YORK DEPARTMENT OF CULTURAL AFFAIRS. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 109.

No. 96–5169. GONZALEZ LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 623.

No. 96–5170. MORRIS ET UX. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 387.

No. 96–5171. MILLS *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 665 So. 2d 489.

No. 96–5172. LUNA *v.* WALTON ET AL. Sup. Ct. Ohio. Certiorari denied.

No. 96–5173. JHAVERI *v.* MURO. Ct. App. Cal, 5th App. Dist. Certiorari denied.

No. 96–5174. TEMPLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 F. 3d 581.

No. 96–5175. WILSON *v.* PRUNTY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 171.

No. 96–5176. THOMPSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 877.

No. 96–5177. MARTEL *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 96–5179. Gadson *v.* Singletary, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 176.

No. 96–5180. Fredeluces *v.* Office of Personnel Management. C. A. Fed. Cir. Certiorari denied. Reported below: 79 F. 3d 1163.

No. 96–5181. Gilbert *v.* Parker, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 96–5182. Esposito *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 85 F. 3d 613.

No. 96–5183. Coleman *v.* Angelone, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 371.

No. 96–5184. Bates *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 77 F. 3d 1101.

No. 96–5187. Pullen *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 427.

No. 96–5188. Sallee *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 945.

No. 96–5189. Rogers *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 96–5191. Simpson *v.* Cepak, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 78 F. 3d 579.

No. 96–5192. Santos *v.* New York. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 209 App. Div. 2d 731, 619 N. Y. S. 2d 684.

No. 96–5193. Smith *v.* Englewood Associates et al. Ct. App. Ga. Certiorari denied.

No. 96–5194. Ortiz *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 439.

No. 96–5195. Briscoe *v.* Gammon, Superintendent, Moberly Correctional Center. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 588.

No. 96–5196. CROWDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 830.

No. 96–5197. TOEPEAKA *v.* DEPARTMENT OF THE TREASURY. C. A. 9th Cir. Certiorari denied.

No. 96–5198. WILLMES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 82 F. 3d 421.

No. 96–5199. BANKO *v.* WORKMEN'S COMPENSATION APPEAL BOARD OF PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied.

No. 96–5200. RODRIGUEZ MACIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 619.

No. 96–5201. MAMMAH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 1312.

No. 96–5202. MCQUEEN *v.* BAKER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 1313.

No. 96–5203. JOHNSON *v.* SULLIVAN ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–5204. BURKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 85 F. 3d 617.

No. 96–5205. CABRERA-SOSA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 81 F. 3d 998.

No. 96–5207. SCHUELLER *v.* EDGAR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1154.

No. 96–5208. SCHULTZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 79 F. 3d 1158.

No. 96–5209. WOODY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 96–5210. PIERCE *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 81 F. 3d 163.

No. 96–5211. RAGAN *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–5212. PATRICK *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied. Reported below: 318 S. C. 352, 457 S. E. 2d 632.

No. 96–5213. Sawyer *v.* Dairy Queen. C. A. 6th Cir. Certiorari denied. Reported below: 86 F. 3d 1156.

No. 96–5215. Forbey *v.* New Hampshire. Sup. Ct. N. H. Certiorari denied.

No. 96–5216. Harrison *v.* Digital Equipment Corp. et al. Sup. Ct. Ga. Certiorari denied.

No. 96–5217. Harrison *v.* Moya, Warden, et al. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 623.

No. 96–5218. Deas *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 415.

No. 96–5220. Gilliam *v.* California. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 96–5221. Hodges *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 836.

No. 96–5222. Henderson *v.* Brown, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 82 F. 3d 432.

No. 96–5223. Hayes *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 135.

No. 96–5224. Fetrow *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 85 F. 3d 613.

No. 96–5226. McClure *v.* City of Charlotte, North Carolina. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1151.

No. 96–5227. McGhee *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 438.

No. 96–5228. King *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 73 F. 3d 1564.

No. 96–5229. McManus *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 87 F. 3d 1309.

No. 96–5230. Langston *v.* Netherland, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 82 F. 3d 410.

No. 96–5231. CHAPMAN *v.* VANDER ARK, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 96–5233. ATAMIAN *v.* CHIN ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 108 Md. App. 715.

No. 96–5235. WILLIAMS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 78 F. 3d 1510.

No. 96–5236. CHRISTENSEN *v.* SCOTT, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 46.

No. 96–5237. DECKARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 96–5238. BABINEAUX *v.* KLEVENHAGEN ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–5240. MATTHEWS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 275 Ill. App. 3d 1131, 692 N. E. 2d 874.

No. 96–5243. GOINS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 251 Va. 442, 470 S. E. 2d 114.

No. 96–5245. OFFIONG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 430.

No. 96–5247. BANE *v.* SPROUSE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 148.

No. 96–5248. MORRISON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 423.

No. 96–5249. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1154.

No. 96–5250. IQBAL *v.* BERKELEY MARINA MARRIOTT MANAGEMENT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 427.

No. 96–5251. OLGUINI *v.* LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 428.

No. 96–5253. SIMPSON *v.* FREEMAN. Ct. App. N. M. Certiorari denied.

No. 96–5255. RODRIGUEZ *v.* MITCHELL, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 945.

No. 96–5256. ENRIQUEZ *v.* HATCHER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–5257. HOLLOWAY *v.* JABE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 373.

No. 96–5258. GOMEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 423.

No. 96–5260. WALLACE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 1330.

No. 96–5262. WAGNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 77 F. 3d 485.

No. 96–5263. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 85 F. 3d 618.

No. 96–5264. CARDAN *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–5266. BENGE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 75 Ohio St. 3d 136, 661 N. E. 2d 1019.

No. 96–5267. AGUILAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 620.

No. 96–5268. GLOCK *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 878.

No. 96–5270. FEHER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 83 F. 3d 434.

No. 96–5271. FLORES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 79 F. 3d 7.

No. 96–5273. WAGES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 261 Ill. App. 3d 576, 633 N. E. 2d 855.

No. 96–5274. WESTBROOKS *v.* COURT OF COMMON PLEAS OF PENNSYLVANIA, ALLEGHENY COUNTY. C. A. 3d Cir. Certiorari denied.

No. 96–5275. BRETSCHNEIDER *v.* BROWN. Ct. App. Okla. Certiorari denied.

No. 96–5276. CHAVEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 83 F. 3d 434.

No. 96–5277. BASKET *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 82 F. 3d 44.

No. 96–5278. BEALS *v.* UNITED STATES; and
No. 96–5720. VOSS ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 1521.

No. 96–5279. LONG *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 96–5280. RESNIK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 683.

No. 96–5281. RUFF *v.* ARMONTROUT, ASSISTANT DIRECTOR, ZONE II, MISSOURI DIVISION OF ADULT INSTITUTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 77 F. 3d 265.

No. 96–5282. SALAZAR GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 622.

No. 96–5283. ROCHESTER *v.* REED ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 415.

No. 96–5284. PAYNE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–5285. JOSEPH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 389.

No. 96–5286. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 1258.

No. 96–5287. THOMPSON *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 74 F. 3d 1571.

No. 96–5288. Torres *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 427.

No. 96–5289. Favarolo *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 687.

No. 96–5290. French *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 76 F. 3d 186.

No. 96–5291. Faulk *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 620.

No. 96–5292. Day *v.* Committee of Bar Examiners. Sup. Ct. Cal. Certiorari denied.

No. 96–5293. Hand *v.* Stepanik, Superintendent, State Correctional Institution at Dallas, Pennsylvania, et al. C. A. 3d Cir. Certiorari denied. Reported below: 77 F. 3d 462.

No. 96–5294. Noltimier *v.* Court of Appeals of Minnesota. Sup. Ct. Minn. Certiorari denied.

No. 96–5295. Mosley *v.* Low Country Media, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 150.

No. 96–5296. Jacobs *v.* Supreme Court of Illinois. Sup. Ct. Ill. Certiorari denied.

No. 96–5297. Richardson *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 342 N. C. 772, 467 S. E. 2d 685.

No. 96–5298. Kulinski *v.* Runyon, Postmaster General. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 373.

No. 96–5299. Lopes *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 82 F. 3d 421.

No. 96–5300. Waters *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 157.

No. 96–5301. Bruen *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 82 F. 3d 411.

No. 96–5302. Buck *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 86 F. 3d 1167.

No. 96–5303. REESE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–5304. COLEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 78 F. 3d 154.

No. 96–5305. WILLIAMS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 321 S. C. 327, 468 S. E. 2d 626.

No. 96–5307. HOSKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 624.

No. 96–5309. GERALDS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 674 So. 2d 96.

No. 96–5310. ALVER *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 86 F. 3d 1179.

No. 96–5311. BANKSTON ET AL. *v.* SOUTHERN FARM BUREAU CASUALTY INSURANCE CO. ET AL. (two judgments). C. A. 5th Cir. Certiorari denied.

No. 96–5312. BRITO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 96–5313. CORNELY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 79 F. 3d 1158.

No. 96–5314. COOK ET UX. *v.* BOYD. C. A. 3d Cir. Certiorari denied. Reported below: 85 F. 3d 611.

No. 96–5317. ABIDEKUN *v.* COMMISSIONER OF SOCIAL SERVICES OF THE CITY OF NEW YORK ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 96–5318. DAIS *v.* MAZURKIEWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–5319. DUARTE *v.* UNITED STATES BUREAU OF PRISONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 83 F. 3d 431.

No. 96–5320. DEMPSEY *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 40 Mass. App. 1125, 665 N. E. 2d 1039.

No. 96–5321. FENTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 152.

No. 96–5322. ONAGHISE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 85 F. 3d 638.

No. 96–5323. RHODE *v.* OLK LONG, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 84 F. 3d 284.

No. 96–5324. ROBERTS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–5325. SULLIVAN *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 676 A. 2d 908.

No. 96–5326. KWAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 387.

No. 96–5327. KOKOSKI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 82 F. 3d 411.

No. 96–5329. JOHNSON *v.* NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 86 F. 3d 1166.

No. 96–5332. SHERN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 275 Ill. App. 3d 1133, 692 N. E. 2d 875.

No. 96–5333. PARISI *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 267 Ill. App. 3d 1077, 684 N. E. 2d 1120.

No. 96–5334. BUKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 77 F. 3d 490.

No. 96–5336. MCCALL *v.* ARIZONA. Super. Ct. Ariz., Maricopa County. Certiorari denied.

No. 96–5338. LONCHAR *v.* HOFBAUER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 96–5339. WASHINGTON *v.* SINGER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 848.

No. 96–5340. THOMAS *v.* SANDERS ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–5341. BAKER *v.* INDEPENDENT ORDER OF FORESTERS ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–5343. HILL *v.* GOODEN ET AL. Sup. Ct. Miss. Certiorari denied.

No. 96–5344. DERR *v.* JABE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 414.

No. 96–5345. EMMONS *v.* LUMLEY. C. A. 11th Cir. Certiorari denied.

No. 96–5346. PINEDA DUQUE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 85 F. 3d 638.

No. 96–5347. HARRIS *v.* UNITED STATES; and
No. 96–5537. DORSEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 85 F. 3d 617.

No. 96–5348. SHELLY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 83 F. 3d 425.

No. 96–5350. DOTSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 83 F. 3d 425.

No. 96–5352. CAMBAS HERNANDEZ ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 82 F. 3d 429.

No. 96–5353. REINBOLD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 96–5354. STANTON *v.* WITKOWSKI, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied.

No. 96–5355. LAWAL *v.* STANLEY BOSTITCH CO. ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–5357. CASTILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 1480.

No. 96–5358. CEBALLOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 73 F. 3d 1107.

No. 96–5359. TYNES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 83 F. 3d 434.

No. 96–5361. CIELTO *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 85 F. 3d 613.

No. 96–5363. WILLIAMS *v.* CASPARI, SUPERINTENDENT, MISSOURI EASTERN CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 96–5364. TUGGLE *v.* NETHERLAND, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 79 F. 3d 1386.

No. 96–5367. STAUP *v.* FIRST UNION NATIONAL BANK OF FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 675 So. 2d 929.

No. 96–5368. DELLENBACH *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL INSTITUTE. C. A. 7th Cir. Certiorari denied. Reported below: 76 F. 3d 820.

No. 96–5370. LYONS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 1, 468 S. E. 2d 204.

No. 96–5371. KANDIES *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 342 N. C. 419, 467 S. E. 2d 67.

No. 96–5372. CHUQUIMARCA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 682.

No. 96–5373. BACCHI *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 683.

No. 96–5375. SIMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1252.

No. 96–5376. RAWLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 85 F. 3d 643.

No. 96–5377. MEHIO *v.* GRABER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 77 F. 3d 493.

No. 96–5378. JONES *v.* FARLEY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 83 F. 3d 424.

No. 96–5379. KNIGHT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 77 F. 3d 489.

No. 96–5381. NEADLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 72 F. 3d 1104.

No. 96–5382. KILLINGSWORTH *v.* STOCK, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–5383. MCDONALD *v.* INLAND CONTAINER CORP. Ct. App. Ga. Certiorari denied. Reported below: 221 Ga. App. XXIX.

No. 96–5384. SHORES *v.* STOCK, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1171.

No. 96–5385. SHELTON *v.* LENSING, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 79 F. 3d 1145.

No. 96–5386. SCEIFERS *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 663 N. E. 2d 1191.

No. 96–5387. ADELMAN *v.* MERCY CATHOLIC MEDICAL CENTER. Super. Ct. Pa. Certiorari denied.

No. 96–5388. WOGENSTAHL *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 75 Ohio St. 3d 344, 662 N. E. 2d 311.

No. 96–5389. WELLS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 624.

No. 96–5390. WISHNATSKY *v.* BERGQUIST ET AL. Sup. Ct. N. D. Certiorari denied. Reported below: 550 N. W. 2d 394.

No. 96–5391. WADLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 510.

No. 96–5392. VARGAS *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 86 F. 3d 1273.

No. 96–5393. WRIGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 127.

No. 96–5394. WILLIAMS ET AL. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–5396. HILL *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 75 Ohio St. 3d 195, 661 N. E. 2d 1068.

No. 96-5397. HUTCHINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 75 F. 3d 626.

No. 96-5399. FLOYD *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 101, 468 S. E. 2d 46.

No. 96-5401. DECASTRO *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 342 N. C. 667, 467 S. E. 2d 653.

No. 96-5402. FARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 391.

No. 96-5403. DOUGLAS *v.* UNITED STATES;

No. 96-5495. DOUGLAS *v.* UNITED STATES; and

No. 96-5501. KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 1315.

No. 96-5404. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 436.

No. 96-5405. GRAHAM *v.* FURLONG, SUPERINTENDENT, LIMON CORRECTIONAL FACILITY, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 76 F. 3d 392.

No. 96-5406. HENSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 83 F. 3d 425.

No. 96-5407. BROWN *v.* AMERICAN EXPRESS TRAVEL RELATED SERVICES CO., INC. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 683.

No. 96-5409. BROADNAX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 85 F. 3d 617.

No. 96-5410. RICHARDS *v.* GENERAL SERVICES ADMINISTRATION. C. A. 7th Cir. Certiorari denied. Reported below: 72 F. 3d 132.

No. 96-5411. FELTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 79 F. 3d 1142.

No. 96-5412. HUPP *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 836.

No. 96–5413. FELDER *v.* STOCK, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–5414. ALLPHIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 78 F. 3d 598.

No. 96–5415. OWES *v.* SESSIONS, ATTORNEY GENERAL OF ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 438.

No. 96–5416. SALMON *v.* BRANTON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1038.

No. 96–5418. CONTRERAS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 96–5419. BROWN *v.* RUBIN, SECRETARY OF THE TREASURY, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 96–5420. MITCHELL-ANGEL *v.* CRONIN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 108.

No. 96–5421. IRVING *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 80 F. 3d 558.

No. 96–5422. BURGER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 941.

No. 96–5423. STEELE *v.* HAN CHUL CHOI. C. A. 7th Cir. Certiorari denied. Reported below: 82 F. 3d 175.

No. 96–5424. BORROMEO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 78 F. 3d 579.

No. 96–5425. PATTERSON *v.* RUBIN, SECRETARY OF THE TREASURY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 838.

No. 96–5426. CAMPBELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 79 F. 3d 1158.

No. 96–5427. GIBBONS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 942.

No. 96–5428. DORTCH *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1713.

No. 96–5430. MADDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 417.

No. 96–5431. LUSK *v.* POPE COUNTY, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied.

No. 96–5432. KONTAKIS *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–5433. MISSKELLEY *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 323 Ark. 449, 915 S. W. 2d 702.

No. 96–5434. NERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 847.

No. 96–5435. LEKHOVITSER *v.* LEKHOVITSER. Sup. Ct. Fla. Certiorari denied. Reported below: 666 So. 2d 144.

No. 96–5436. LONG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 85 F. 3d 642.

No. 96–5437. MOORE *v.* KUHLMANN, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 683.

No. 96–5438. KINNELL *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 22 Kan. App. 2d xxiii, 918 P. 2d 649.

No. 96–5439. MUNOZ-MOSQUERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 683.

No. 96–5440. AINGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 170.

No. 96–5442. KAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 83 F. 3d 98.

No. 96–5443. WALDROP *v.* HOPPER, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 1308.

No. 96–5444. WHALEY *v.* OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 430.

No. 96–5445. YULEE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 837.

No. 96–5446. Wilmoth *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 848.

No. 96–5447. Cohen *v.* Waters, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 82 F. 3d 409.

No. 96–5448. Staude *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1, 908 P. 2d 1373.

No. 96–5449. Omoike *v.* Lee et al. Sup. Ct. La. Certiorari denied. Reported below: 673 So. 2d 615.

No. 96–5450. Spaulding *v.* Hill, Superintendent, Odom Correctional Institution. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 133.

No. 96–5451. Calder *v.* Bayer, Director, Nevada Department of Prisons, et al. C. A. 9th Cir. Certiorari denied.

No. 96–5452. Wills *v.* Andrews, Superintendent, Albion Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 96–5453. Kelley *v.* United States District Court for the District of Maryland. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1150.

No. 96–5455. Marx *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 77 F. 3d 486.

No. 96–5456. Waterman *v.* Massachusetts. App. Ct. Mass. Certiorari denied. Reported below: 40 Mass. App. 1105, 661 N. E. 2d 958.

No. 96–5457. Alberto Pelaez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 435.

No. 96–5458. Spratt *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 623.

No. 96–5459. Neville et al. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 82 F. 3d 750.

No. 96–5460. Card *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 675 So. 2d 926.

No. 96–5463. Stulz *v.* United States Parole Commission. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 625.

No. 96–5464. PHACHANSIRI *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 38 Mass. App. 100, 645 N. E. 2d 60.

No. 96–5465. STAVRAKAS *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 82 F. 3d 411.

No. 96–5466. PETAWAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 617.

No. 96–5467. ORTIZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 84 F. 3d 977.

No. 96–5468. WARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 85 F. 3d 630.

No. 96–5469. WILLIAMS ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 683.

No. 96–5470. JELINEK *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 224 App. Div. 2d 717, 638 N. Y. S. 2d 731.

No. 96–5471. NOBLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 96–5472. ACOSTA CORONADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 85 F. 3d 638.

No. 96–5474. PINEDA-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 847.

No. 96–5475. PLESS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 79 F. 3d 1217.

No. 96–5476. MOORE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 96–5478. MONGELLI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 436.

No. 96–5480. BILLIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 83 F. 3d 209.

No. 96–5482. HARRISON *v.* LETSINGER. C. A. 7th Cir. Certiorari denied.

No. 96–5485. VEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 451 Pa. Super. 605, 678 A. 2d 835.

No. 96–5487. HELDON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–5488. HAMPTON *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 96–5489. HICKMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1199.

No. 96–5493. HARVEY *v.* SHILLINGER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 76 F. 3d 1528.

No. 96–5494. HICKMAN *v.* UNITED STATES;
No. 96–5554. IVY, AKA NORWOOD *v.* UNITED STATES;
No. 96–5619. TRAYLOR *v.* UNITED STATES;
No. 96–5634. TAYLOR *v.* UNITED STATES; and
No. 96–5655. NORWOOD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 83 F. 3d 1266.

No. 96–5496. HICKS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 96–5497. BRYANT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 1150.

No. 96–5500. LAVIGNE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 78 F. 3d 1.

No. 96–5502. WALKER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 216, 469 S. E. 2d 919.

No. 96–5503. JESSEP *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 53 Ark. App. xviii.

No. 96–5506. HARGIS *v.* WATERS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 414.

No. 96–5507. HOWARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 85 F. 3d 629.

No. 96–5509. TIERNEY *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 96–5510. ALLEN *v.* OREGON. Ct. App. Ore. Certiorari denied.

No. 96–5511. LOWE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 96–5514. HUFFMAN *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 96–5516. GRAHAM *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 96–5518. ZUNIGA HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 79 F. 3d 1144.

No. 96–5519. STEVENS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 83 F. 3d 60.

No. 96–5521. MINNIFIELD *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. 5th Cir. Certiorari denied.

No. 96–5523. BASTIDAS *v.* UNITED STATES; and
No. 96–5524. BASTIDAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 85 F. 3d 642.

No. 96–5525. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 626.

No. 96–5527. SERRANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1168.

No. 96–5532. FOUNTAIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 85 F. 3d 617.

No. 96–5533. FITZHUGH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 1326.

No. 96–5538. SIMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 853.

No. 96–5541. SAVAGE *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied.

No. 96–5542. RICHARDSON *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 40 Conn. App. 526, 671 A. 2d 840.

No. 96–5544. SULE *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 81 F. 3d 173.

No. 96–5545. ISLAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1164.

No. 96–5546. MCCARTY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 943.

No. 96–5547. JOSEPH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–5548. MEDINA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 419.

No. 96–5550. JEFFERSON *v.* HART. C. A. 10th Cir. Certiorari denied. Reported below: 84 F. 3d 1314.

No. 96–5551. MALLARD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–5552. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 626.

No. 96–5557. CRAWFORD *v.* UNITED STATES; and HUFF *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 83 F. 3d 964 (first judgment); 89 F. 3d 842 (second judgment).

No. 96–5558. CONERLY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 91 F. 3d 144.

No. 96–5559. CHASE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 436.

No. 96–5561. CONTRERAS-CONTRERAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 1103.

No. 96–5562. CHAVEZ *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 44 Cal. App. 4th 1144, 52 Cal. Rptr. 2d 347.

No. 96–5565. IRVIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 87 F. 3d 860.

No. 96–5566. MOORE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 89 F. 3d 851.

No. 96–5574. MALLORY ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 176.

No. 96–5577. CROSS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 96–5578. ALZATE-YEPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 80 F. 3d 656.

No. 96–5579. BRYAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 595.

No. 96–5580. TOBIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 157.

No. 96–5582. MARK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 77 F. 3d 472.

No. 96–5583. MORRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 96–5584. TOKAREVICH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 161.

No. 96–5585. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 94.

No. 96–5587. NUGENT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 44.

No. 96–5589. MUSE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 672.

No. 96–5590. KULINSKI *v.* RUNYON, POSTMASTER GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 373.

No. 96–5591. BROWN *v.* HAMPTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 414.

No. 96–5592. ADAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 684.

No. 96–5598. MARTINEZ-CORTEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 626.

No. 96–5600. Christy *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 841.

No. 96–5606. Smith *v.* Norris, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 96–5607. Baker *v.* United States. Ct. App. D. C. Certiorari denied.

No. 96–5608. Bell *v.* Administrator of Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois. Sup. Ct. Ill. Certiorari denied.

No. 96–5610. McAllister *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 387.

No. 96–5612. Waters *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 84 F. 3d 86.

No. 96–5613. Poe *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 152.

No. 96–5620. McMillian *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 1311.

No. 96–5621. Martinez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 1313.

No. 96–5623. Brooks *v.* Price. C. A. 3d Cir. Certiorari denied.

No. 96–5626. Haywood *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 70 F. 3d 507.

No. 96–5631. Boots *v.* United States;
No. 96–5635. Cook *v.* United States; and
No. 96–5645. Lazore *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 80 F. 3d 580.

No. 96–5632. Walker *v.* Waters, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 78 F. 3d 580.

No. 96–5633. Wheeler *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1170.

No. 96–5637. Ramos *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1324.

No. 96–5639. PHILLIPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 152.

No. 96–5641. ROSE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–5647. MERRITT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 80 F. 3d 1025.

No. 96–5649. GREENWOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 135.

No. 96–5650. GETER *v.* FRANKLIN NATIONAL BANK OF WASHINGTON, D. C. C. A. D. C. Cir. Certiorari denied.

No. 96–5651. DENHA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 87 F. 3d 1315.

No. 96–5652. HOLT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 85 F. 3d 629.

No. 96–5656. MILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 1312.

No. 96–5657. JONES *v.* IGNACIO, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–5664. OLIVO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 69 F. 3d 1057 and 80 F. 3d 1466.

No. 96–5665. ALMERO *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 106 F. 3d 422.

No. 96–5667. GARZA CANTU ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 87 F. 3d 1118.

No. 96–5668. OSAYANDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 140.

No. 96–5670. GUZMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 75 F. 3d 1090.

No. 96–5671. FINNO ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1169.

No. 96–5673. MONTGOMERY *v.* MELOY, SUPERINTENDENT, ROCKVILLE TRAINING CENTER. C. A. 7th Cir. Certiorari denied. Reported below: 90 F. 3d 1200.

No. 96–5675. WARREN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 96–5676. VALDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1165.

No. 96–5683. KING *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–5685. MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 84 F. 3d 1549.

No. 96–5686. BRADLEY *v.* MEKO, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 96–5687. BRAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 86 F. 3d 1156.

No. 96–5691. GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1153.

No. 96–5692. ESPERICUETA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 433.

No. 96–5699. BROOKS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 82 F. 3d 50.

No. 96–5701. KAMBITSIS ET AL. *v.* SCHWEGMANN GIANT SUPERMARKETS, INC. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 665 So. 2d 500.

No. 96–5704. PIERCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 1330.

No. 96–5709. GATEWARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 84 F. 3d 670.

No. 96–5710. GRAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 85 F. 3d 380.

No. 96–5711. HOSKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 86 F. 3d 1159.

No. 96–5712. HALSEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 82 F. 3d 424.

No. 96–5713. GULLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 836.

No. 96–5717. CREASEY *v.* KEMNA, SUPERINTENDENT, WESTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 96–5718. SEGINES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 86 F. 3d 1156.

No. 96–5721. CATHCART *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 431.

No. 96–5722. WESTCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 1354.

No. 96–5724. WEEKLEY *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 76 F. 3d 1459.

No. 96–5726. WATKINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 85 F. 3d 498.

No. 96–5730. KAMMEFA *v.* MARYLAND DEPARTMENT OF AGRICULTURE. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 150.

No. 96–5735. D'SOUZA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 96–5743. SLUDER ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 86 F. 3d 1157.

No. 96–5744. AYERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 86 F. 3d 1156.

No. 96–5746. GARCIA-RIVAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1153.

No. 96–5747. RASHID *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–5748. KALYAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1164.

No. 96–5751. BOND *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 77 F. 3d 1009.

No. 96–5752. HOBBS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 73 F. 3d 1057.

No. 96–5753. ELLIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1164.

No. 96–5754. LEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1153.

No. 96–5755. KENDRICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 1330.

No. 96–5764. SLATER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 77 F. 3d 471.

No. 96–5767. TSOSIE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 171.

No. 96–5768. WOODSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1153.

No. 96–5771. GRIFFITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 85 F. 3d 284.

No. 96–5772. DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1164.

No. 96–5774. CAVES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 86 F. 3d 1167.

No. 96–5776. CLARK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 84 F. 3d 506.

No. 96–5785. MATHIEU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 137.

No. 96–5786. LOMAYAOMA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 142.

No. 96–5787. JORDAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 96–5793. WILLIS ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 1371.

No. 95–1779. BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER *v.* DRISCOLL. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 71 F. 3d 701.

No. 95–1820. CONNECTICUT *v.* CASSIDY. Sup. Ct. Conn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 236 Conn. 112, 672 A. 2d 899.

No. 95–1969. TATE, WARDEN *v.* GLENN. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 71 F. 3d 1204.

No. 95–2093. MOVSESIAN ET AL. *v.* HAMER. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 82 F. 3d 405.

No. 96–137. FLORIDA *v.* SOCA. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 673 So. 2d 24.

No. 95–1782. PRICE *v.* S–B POWER TOOL, AKA SKIL CORP., A DIVISION OF EMERSON ELECTRIC CO. C. A. 8th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 75 F. 3d 362.

No. 96–5454. MASON *v.* NORWEST BANK SOUTH DAKOTA, N. A., ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 95–1910. ZIMMER ET UX. *v.* AMERICAN TELEPHONE & TELEGRAPH COMPANY OF MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 78 F. 3d 585.

No. 95–2018. HOWMEDICA INC. *v.* HAUDRICH, EXECUTOR AND SOLE LEGATEE OF HAUDRICH, DECEASED. Sup. Ct. Ill. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 169 Ill. 2d 525, 662 N. E. 2d 1248.

No. 96–68. SCHUVER ET AL. *v.* E. I. DU PONT DE NEMOURS & CO. Sup. Ct. Iowa. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 546 N. W. 2d 610.

No. 96–282. BIO-TECHNOLOGY GENERAL CORP. ET AL. *v.* GENENTECH, INC. C. A. Fed. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 80 F. 3d 1553.

No. 95–1929. MCCABE, ADMINISTRATRIX OF THE ESTATE OF ZINGER *v.* CITY OF LYNN. C. A. 1st Cir. Motion of Mental Health Legal Advisors Committee et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 77 F. 3d 540.

No. 95–1980. RIVKIN ET AL., T/A GALAXY MANOR *v.* DOVER TOWNSHIP RENT LEVELING BOARD. Sup. Ct. N. J. Motion of Pacific Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 143 N. J. 352, 671 A. 2d 567.

No. 95–2011. BLACKMAN *v.* UNITED STATES ET AL. C. A. 9th Cir. Motion of petitioner for leave to file a document under seal denied. Certiorari denied. Reported below: 72 F. 3d 1418.

No. 95–2033. BP CHEMICALS LTD. ET AL. *v.* HOECHST CELANESE CORP. C. A. Fed. Cir. Motion of Union Carbide Corp. for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 78 F. 3d 1575.

No. 95–8790. WHITE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER would grant certiorari. Reported below: 79 F. 3d 432.

No. 95–8910. LACKEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER would grant certiorari. Reported below: 83 F. 3d 116.

No. 95–9230. BALLARD ET AL. *v.* KAPILA C. A. 11th Cir. Certiorari before judgment denied.

No. 95–9351. KNEELAND *v.* UNITED STATES ET AL. C. A. 1st Cir. Motion of petitioner for leave to amend petition for writ of certiorari denied. Certiorari denied. Reported below: 81 F. 3d 147.

No. 95–9414. Van Poyck *v.* United States. C. A. 9th Cir. Motion of petitioner for leave to amend petition for writ of certiorari denied. Certiorari denied. Reported below: 77 F. 3d 285 and 491.

No. 96–109. Hickman *v.* County of Los Angeles et al. C. A. 9th Cir. Motion of Lawyer's Second Amendment Society et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 81 F. 3d 98.

No. 96–111. Central Cartage Co. *v.* Central States, Southeast and Southwest Area Pension Fund et al. C. A. 7th Cir. Motion of National Association for Dispute Resolution, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 84 F. 3d 988.

Rehearing Denied

No. 95–1534. Constellation Development Corp. *v.* Dowden, Successor Trustee, et al., 518 U. S. 1017;
No. 95–1806. Shoffeitt *v.* United States, 517 U. S. 1246;
No. 95–8553. Messler et al. *v.* Farmer, Judge, District Court of Appeal of Florida, Fourth District, et al., 517 U. S. 1247;
No. 95–8705. Lekhovitser *v.* Lekhovitser, 518 U. S. 1022;
No. 95–8807. Abidekun *v.* Coombe, Acting Commissioner, New York Department of Correctional Services, 518 U. S. 1025;
No. 95–8947. Stedman *v.* United States, 517 U. S. 1250; and
No. 95–9090. MacKenzie *v.* Internal Revenue Service et al., 518 U. S. 1027. Petitions for rehearing denied.

No. 95–8803. St. Louis *v.* Texas Workers' Compensation Commission et al., 518 U. S. 1024. Motion for leave to file petition for rehearing denied.

Assignment Order

An order of The Chief Justice designating and assigning Justice White (retired) to perform judicial duties in the United States Court of Appeals for the Tenth Circuit during the period from November 18 through November 22, 1996, and for such time as may be required to complete unfinished business, pursuant to 28 U. S. C. § 294(a), is ordered entered on the minutes of this Court, pursuant to 28 U. S. C. § 295.

OCTOBER 9, 1996

Dismissal Under Rule 46

No. 96–236. PENNSYLVANIA *v.* RILEY, SECRETARY OF EDUCATION. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 84 F. 3d 125.

OCTOBER 15, 1996

Appeal Dismissed

No. 96–63. HANSBERGER ET AL. *v.* UNITED STATES. Appeal from D. C. N. D. Ga. dismissed as moot.

Certiorari Granted—Vacated and Remanded

No. 95–1826. THOMAS ET UX. *v.* AMERICAN HOME PRODUCTS, INC., ET AL. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Banks* v. *ICI Americas, Inc.*, 266 Ga. 607, 469 S. E. 2d 171 (1996). Reported below: 39 F. 3d 325.

JUSTICE SCALIA, concurring.

Since I have been critical of the Court's excessive use of the GVR mechanism, I think it appropriate to explain why I think it proper to GVR here.

As I described in *Lawrence* v. *Chater*, 516 U. S. 163, 177 (1996) (SCALIA, J., dissenting), our practice of *granting* certiorari, *vacating* the judgment below, and *remanding* for further proceedings in light of intervening developments apparently began when we first set aside the judgments of state supreme courts to allow those courts to consider the impact of state statutes enacted after their judgments had been entered. *E. g., Missouri ex rel. Wabash R. Co.* v. *Public Serv. Comm'n*, 273 U. S. 126 (1927). By 1945, the practice of vacating state judgments in light of supervening events had become so commonplace that we could describe it as "[a] customary procedure." *State Farm Mut. Automobile Ins. Co.* v. *Duel*, 324 U. S. 154, 161. "Similarly, where a federal court of appeals' decision on a point of state law had been cast in doubt by an intervening state supreme court decision, it became our practice to vacate and remand so that the question could be decided by judges 'familiar with the intricacies and trends of local law and practice.'" *Lawrence, supra,* at 180 (SCALIA, J., dissenting) (quoting *Huddleston* v. *Dwyer,* 322 U. S. 232, 237 (1944)). See also *Conner* v. *Simler,* 367 U. S. 486 (1961); cf. *Omaha Nat. Bank* v. *Nebraskans for Independent Banking, Inc.,* 426 U. S. 310 (1976) (GVR'ing in light of an intervening state statute).

Thus, the present case falls squarely within our historical use of the GVR mechanism. The Supreme Court of Georgia's decision in *Banks* v. *ICI Americas, Inc.,* 266 Ga. 607, 609–610, 469 S. E. 2d 171, 174 (1996) *(Banks II),* handed down after the Court of Appeals for the Eleventh Circuit's decision, makes clear that the Eleventh Circuit's interpretation of Georgia law was incorrect. The sequence of events was as follows: After the Court of Appeals had issued its *per curiam* opinion affirming the District Court's entry of summary judgment against petitioners, the Georgia Supreme Court, in *Banks* v. *I. C. I.,* 264 Ga. 732, 450 S. E. 2d 671 (1994) *(Banks I),* in effect overruled the Georgia case that was the basis for the District Court's holding. Petitioners' petition to the Eleventh Circuit for rehearing was denied, the only explanation given being that "the holding of the Georgia Supreme Court in *[Banks I]* would not apply to the injuries involved in this case" because that holding had no retroactive application. *Thomas* v. *American Home Products, Inc.,* No. 93–9214 (CA11 1996), App. to Pet. for Cert. 28a. Shortly before the present petition for writ of certiorari was filed, the Supreme Court of Georgia held in *Banks II* that *Banks I was* retroactive.

THE CHIEF JUSTICE points out that "[p]etitioners' request for relief meets none of the tests set forth in this Court's Rule 10, 'Considerations Governing Review on Certiorari.'" *Post,* at 916. That is certainly so. Of course as this Court's Rule 10 itself makes plain, those tests "neither control[l] nor fully measur[e] the Court's discretion," but rather merely "indicate the character of the reasons the Court considers" in deciding whether to grant certiorari. More importantly, however, we have never regarded Rule 10, which indicates the general character of reasons for which we will grant *plenary consideration,* as applicable to our practice of GVR'ing. See, *e. g., Lawrence* v. *Chater, supra,* at 166–167. Indeed, *most* of the cases in which we exercise our power to GVR plainly do not meet the "tests" set forth in Rule

10. See, *e. g.*, *Schmidt* v. *Espy*, 513 U. S. 801 (1994) (GVR in light of administrative reinterpretations of federal statutes); *Crouse* v. *United States*, *ante*, p. 801 (GVR in light of *Koon* v. *United States*, 518 U. S. 81 (1996)); *Greater N. O. Broadcasting* v. *United States*, *ante*, p. 801 (GVR in light of *44 Liquormart, Inc.* v. *Rhode Island*, 517 U. S. 484 (1996)).

We are not remanding this state-law case, as THE CHIEF JUSTICE suggests, because the Eleventh Circuit failed to prophesy the course that the Supreme Court of Georgia would ultimately take, see *post*, at 917, any more than we remand *federal-law* cases in light of intervening decisions of *this* Court because the court of appeals failed adequately to predict how *we* would decide. In both instances, we are vacating the decision below to allow the Court of Appeals to consider an intervening decision of the Court that is the final expositor of a particular body of law—with federal questions, the Supreme Court of the United States, and with questions of Georgia law, the Supreme Court of Georgia. We assuredly would not decline to GVR a case affected by one of our own intervening decisions merely because the case "is of no general importance beyond the interest of the parties." *Post*, at 917. Almost all of our GVR's fit this description—for example, the many cases GVR'd in recent months in light of our decision in *Bailey* v. *United States*, 516 U. S. 137 (1995), *e. g.*, *Cuellar* v. *United States*, 518 U. S. 1014 (1996). I can think of no possible reason why we would routinely GVR "unimportant" cases in light of our own opinions but not in light of state supreme court opinions, unless, of course, we have less regard for the federal courts' correct application of state law than for their correct application of federal law—an attitude we should certainly not acknowledge.

I do not share THE CHIEF JUSTICE's fear that our action today will flood the Court with applications to review questions of state law by petitioners "unhappy" with the result below. *Post*, at 917. As I have described, today's action breaks no new ground but merely continues a longstanding practice. It does not involve us in an intensive review of state law, but requires only the simple determination (rarely available) that the federal-court decision on state law appears to contradict a *subsequent* decision of the state supreme court. When the conflict is of "far more dubious . . . relevance" than the one at issue here, *ibid.*, we can and should exercise our discretion to deny the petition for writ of certiorari.

CHIEF JUSTICE REHNQUIST, with whom JUSTICE BREYER joins, dissenting.

This is a personal-injury, products-liability case which is in the federal court system by virtue of diversity of citizenship. The Court of Appeals for the Eleventh Circuit affirmed a grant of summary judgment against petitioners by the District Court, and petitioners have sought review here. In a supplemental brief filed after their petition, they have called attention to the decision of the Supreme Court of Georgia, *Banks* v. *ICI Americas, Inc.*, 266 Ga. 607, 609–610, 469 S. E. 2d 171, 174 (1996), handed down on April 29, 1996, 2½ months after the Court of Appeals denied rehearing.

Petitioners' request for relief meets none of the tests set forth in this Court's Rule 10, "Considerations Governing Review on Certiorari." The first of these considerations, as outlined in the Rule, is if a court of appeals has rendered a decision in conflict with the decision of another United States court of appeals, or has decided a federal question in a way which conflicts with the decision of a state court of last resort, or "has so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power." There is clearly no conflict between courts of appeals in this case, nor do petitioners claim that the Court of Appeals for the Eleventh Circuit has decided a federal question in a way which conflicts with a state court of last resort. Nor could it be claimed that the Court of Appeals departed from the accepted and usual course of judicial proceedings, since the decision of the Supreme Court of Georgia in *Banks* was handed down more than two months after the Court of Appeals denied rehearing.

The other considerations governing review of certiorari likewise have no application to this case. The Court of Appeals here has not decided an important question of federal law which should be settled by this Court, or decided a federal question in a way that conflicts with applicable decisions of this Court.

Thus, one must ask, why is this Court intervening to vacate and remand this case to the Court of Appeals? The Court's answer, I suspect, would be that *Banks* suggests that the Court of Appeals may have wrongly decided an issue of Georgia law in the case. But this Court's function, generally speaking, is not to correct federal courts' misapplications of state law, except, perhaps, in exceptional cases with importance beyond the parties' particular dispute. This is not such an exceptional case; there is no reason to think that the Eleventh Circuit will not apply *Banks* faithfully in future cases. Nor is this a case which we must, for one reason or another, decide on the merits and where the views of another court as to the intervening state-law decision might be useful, or a case where certiorari has already been granted and the case argued on the merits. See *Lawrence* v. *Chater*, 516 U. S. 163, 176 (1996) (REHNQUIST, C. J., concurring in No. 94–9323 and dissenting in No. 94–8988) (citing and distinguishing cases).

To be sure, there is a "special deference owed to state law and state courts in our system of federalism," *id.*, at 179 (SCALIA, J., dissenting), but by failing to predict the Georgia Supreme Court's *Banks* decision the Eleventh Circuit has in no way slighted the State of Georgia or upset the balance of our federalism. I do not believe that this Court has a stake in the correctness of discrete state-law decisions by federal courts, nor, in such cases, any " 'obligat[ion] to weigh justice among contesting parties.' " *Lawrence*, *supra*, at 177 (REHNQUIST, C. J., concurring in No. 94–9323 and dissenting in No. 94–8988) (quoting 2 H. Pringle, The Life and Times of William Howard Taft 997–998 (1939)).

I trust I am correct in thinking that the Court would not grant certiorari in this case to decide whether or not the decision of the Supreme Court of Georgia in *Banks* requires a different outcome than that reached below. I am equally sanguine that the Court would not summarily reverse the decision of the Court of Appeals on a question of Georgia law, a subject about which that court knows a great deal more than we do. Because we are only granting, vacating, and remanding to the Court of Appeals, the Court's action may seem more palatable here. But I believe it is just as incorrect as would be our deciding the merits of a question of state law in some other diversity case which is of no general importance beyond the interest of the parties. The decision to vacate and remand in this case doubtless seems an easy one to those who join it; the Court of Appeals specifically mentioned the retroactivity issue later decided in *Banks* in its opinion denying rehearing, and respondents have filed no response to petitioners' supplemental brief. But today's action will encourage numerous similar requests from other parties unhappy with the decision of a court of appeals in their diversity cases, and the relevance of the intervening factors which they urge may be far more dubious than is the relevance of *Banks* to this case.

Finally, requiring the Court of Appeals to delve into the facts and law of the case again, months after it denied rehearing, is not without cost. The typical active judge of the Court of Appeals for the Eleventh Circuit participates in somewhere between 150 and 200 panel decisions each year. For us to require a busy court to once more revisit the merits of this state-law dispute gives these petitioners more of the time and resources of the federal judicial system than they deserve.

I dissent from the Court's disposition of this case.

No. 95–1830. GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* FIERRO ET AL. C. A. 9th Cir. Motion of Pacific Legal Foundation for leave to file a brief as *amicus curiae* granted. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of Cal. Penal Code Ann. § 3604 (West Supp. 1996). Reported below: 77 F. 3d 301.

JUSTICE STEVENS, with whom JUSTICE BREYER joins, dissenting.

There are powerful reasons for concluding capital cases as promptly as possible. Delay in the execution of judgments imposing the death penalty frustrates the public interest in deterrence and eviscerates the only rational justification for that type of punishment.[1] From the standpoint of the defendant, the delay can become so excessive as to constitute cruel and unusual punishment prohibited by the Eighth Amendment.[2] Unfortunately, however, the Court has exhibited a callous indifference to these concerns, first by refusing to hear the claims of two inmates who have suffered under a "sword of Damocles" since they were first sentenced to death in 1978 and 1979,[3] and now by ordering a remand that can serve no purpose other than to delay the conclusion of these cases.

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[1] See, *e. g.*, Kozinski & Gallagher, Death: The Ultimate Run-On Sentence, 46 Case W. Res. L. Rev. 1, 4 (1995) ("Whatever purposes the death penalty is said to serve—deterrence, retribution, assuaging the pain suffered by victims' families—these purposes are not served by the system as it now operates"); Powell, Commentary: Capital Punishment, 102 Harv. L. Rev. 1035 (1989) ("[Y]ears of delay between sentencing and execution . . . undermin[e] the deterrent effect of capital punishment and reduc[e] public confidence in the criminal justice system").

[2] See *Lackey* v. *Texas*, 514 U. S. 1045 (1995) (STEVENS, J., respecting denial of certiorari); *Furman* v. *Georgia*, 408 U. S. 238, 312 (1972) (White, J., concurring in judgment) (noting that when the death penalty "ceases realistically to further [the aims of deterrence and retribution] its imposition would then be the pointless and needless extinction of life with only marginal con-

The Court of Appeals for the Ninth Circuit has held that these two respondents may be put to death by lethal injection, but that using the gas chamber to carry out the sentence is constitutionally impermissible. *Fierro* v. *Gomez*, 77 F. 3d 301, 309 (1996). Subsequent to that decision the California Legislature amended the State's death penalty statute to provide that lethal injections should be used to carry out death sentences unless the defendant requests that the State use the gas chamber. See Cal. Penal Code Ann. § 3604(b) (West Supp. 1996). Thus, under either the terms of the new statute or the terms of the judgment of the Court of Appeals, lethal injections will be used to carry out these respondents' sentences. It seems perfectly clear that nothing but delay will be accomplished by this Court's decision to vacate the judgment of the Court of Appeals and to remand for further proceedings in the light of the new statute. I therefore respectfully dissent.

No. 95–1956. DEPARTMENT OF THE INTERIOR ET AL. *v.* SOUTH DAKOTA ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded to the Court of Appeals with instructions to vacate the judgment of the United States District Court for the District of South Dakota and remand the matter to the

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tributions to any discernible social or public purposes. A penalty with such negligible returns to the State would be patently excessive and cruel and unusual punishment violative of the Eighth Amendment").

[3] See *Lackey* v. *Johnson*, *ante*, p. 911 (October 7, 1996) (order denying cert.); *White* v. *Johnson*, *ante*, p. 911 (October 7, 1996) (same). Sadly, in refusing to hear these claims, the Court turns a deaf ear to an argument that courts in other countries have found persuasive. See, *e. g.*, *State* v. *Makwanyane & Mchunu*, Case No. CCT/3/94 (So. Afr. Const. Ct. June 6, 1995); *Pratt* v. *Attorney General of Jamaica*, [1994] 2 A. C. 1, 4 All E. R. 769 (P. C. 1993) (en banc).

Secretary of the Interior for reconsideration of his administrative decision. Reported below: 69 F. 3d 878.

JUSTICE SCALIA, with whom JUSTICE O'CONNOR and JUSTICE THOMAS join, dissenting.

This case arises from the 1990 action of the Department of the Interior acquiring 91 acres in trust for the Lower Brule Tribe of the Sioux Indians, pursuant to § 5 of the 1934 Indian Reorganizations Act (IRA), 48 Stat. 985, as amended, 25 U. S. C. § 465. Respondents challenged this action in Federal District Court, contending both that the Department's particular action violated the Administrative Procedure Act (APA), 5 U. S. C. § 706, and that the Secretary's statutory authority to acquire lands under the IRA is unconstitutional as a delegation of legislative power.

Throughout this litigation, until now, it has been the Department's position that IRA land acquisitions are unreviewable under the APA because they fall within the exception for matters "committed to agency discretion by law." § 701(a)(2). The District Court agreed that APA review was unavailable, although on different grounds, holding that since the United States had acquired title, the Quiet Title Act (QTA), 28 U. S. C. § 2409a, provided the sole statutory means of challenging the action, and that the QTA explicitly prohibits actions challenging title to Indian lands. The District Court also upheld the Secretary's constitutional authority to acquire land on behalf of the United States under the IRA. The Court of Appeals for the Eighth Circuit, however, reversed on the ground that § 5 of the IRA constitutes a delegation of legislative power to the Secretary of the Interior and is hence unconstitutional. 69 F. 3d 878 (1995).

Following the Eighth Circuit's sweeping decision, the Department of the Interior did an about-face with regard to the availability of judicial review under the APA. It promulgated a new regulation providing that "the Secretary shall publish in the Federal Register, or in a newspaper of general circulation serving the affected area a notice of his/her decision to take land into trust," and that "the Secretary shall acquire title in the name of the United States no sooner than 30 days after the notice is published." Department of the Interior, Land Acquisitions (Nongaming), 61 Fed. Reg. 18083 (1996) (to be codified at 25 CFR § 151.12). The preamble to that regulation recites that it is being adopted "[i]n response to a recent court decision, *State of South*

Dakota v. *U. S. Department of the Interior,* 69 F. 3d 878 (8th Cir. 1995)," and asserts that the procedure it sets forth "permits judicial review before transfer of title to the United States." The Solicitor General now represents to us that it is the position of the Department of the Interior, as well as that of the Department of Justice, that judicial review of an IRA land trust acquisition may be obtained by filing suit within the 30-day waiting period, although action will continue to be barred by the QTA after the United States formally acquires title.

The decision today—to grant, vacate, and remand in light of the Government's changed position—is both unprecedented and inexplicable. This Court has in recent years occasionally entered a "GVR" in light of a position newly taken by the Solicitor General *where the United States was the prevailing party below.* See, *e. g., Stutson* v. *United States,* 516 U. S. 193 (1996) *(per curiam); Schmidt* v. *Espy,* 513 U. S. 801 (1994); *Wells* v. *United States,* 511 U. S. 1050 (1994); *Reed* v. *United States,* 510 U. S. 1188 (1994); *Chappell* v. *United States,* 494 U. S. 1075 (1990). Even that extension of our earlier practice is in my view unsound. See *Lawrence* v. *Chater,* 516 U. S. 168, 184–186 (1995) (SCALIA, J., dissenting). But we have never before GVR'd simply because the Government, having *lost* below, wishes to try out a new legal position. The unfairness of such a practice to the litigant who prevailed in the court of appeals is obvious. ("Heads I win big," says the Government; "tails we come back down and litigate again on the basis of a more moderate Government theory.") Today's decision encourages the Government to do what it did here: to "go for broke" in the courts of appeals, rather than get the law right the first time.

What makes today's action inexplicable as well as unprecedented is the fact that the Government's change of legal position *does not even purport to be applicable to the present case.* The Government now concedes only that APA review is available before the Secretary's taking of title under the IRA; it has not altered its view that once title has passed to the United States APA review is precluded by the QTA. 28 U. S. C. § 2409a(a); Pet. for Cert. 7. Since in this case title has passed, the Government's position in the present litigation remains what it was: Judicial review is unavailable.

The Government contends, however, that the Court of Appeals' determination that the IRA was a delegation of legislative power was based in part upon the unavailability of judicial review. I fail to see how the availability of judicial review has anything to do with that question; perhaps the Court of Appeals thought otherwise, though its opinion on this point is somewhat contradictory.* If, however, judicial reviewability *was* germane to the Court of Appeals' judgment, surely it was only such reviewability as would exist *of right*, and not such as would be accorded only at the discretion of the agency. It is merely the latter that we have here: The Government concedes only that, *if* the Secretary chooses to announce his acquisition decision *before* the acquisition becomes effective (as the new regulation graciously requires), judicial review is available. It is inconceivable that this reviewability-at-the-pleasure-of-the-Secretary could affect the constitutionality of the IRA in anyone's view, including that of the Court of Appeals.

Finally, the existence of the new regulation does not make this a case in which a postjudgment change in the law applicable to the dispute warrants a remand. The preamble to the regulation acknowledges that "the Eighth Circuit decision precludes the Secretary from taking into trust the land at issue in that particular case," and explicitly states that "[t]he procedure announced in today's rule . . . will apply to all *pending* and *future* trust acquisitions." 61 Fed. Reg. 18083 (1996) (emphasis added). Of course that statement merely recites the obvious, since, title *already* having been acquired in this case, it is quite impossible for the Secretary to provide 30-day advance notice of intent to take title. Evidently for that reason, the Government asks this Court, if it declines to grant certiorari, not merely to GVR, but to do so "with instructions that the judgment of the district court sustaining the Secretary's decision also be vacated and that the matter, in turn, be remanded to the Secretary of the Interior for reconsideration and issuance of a new administrative decision." Pet. for Cert. 25. I cannot imagine where we would derive the authority for this. If, as the Government asserts in its brief, statutory judicial

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*At one point the court quoted approvingly its statement in *United States* v. *Garfinkel*, 29 F. 3d 451, 459 (CA8 1994), that "'[j]udicial review is a factor weighing in favor of upholding a statute against a nondelegation challenge.'" 69 F. 3d 878, 882 (1995). This seems inconsistent, however, with the approach the court takes elsewhere in its opinion, when it says: "We doubt whether the Quiet Title Act precludes APA review of agency action by which the United States *acquires* title. But given our conclusion that § 465 is an unconstitutional delegation of power, we need not decide this issue." *Id.*, at 881, n. 1.

review of a land-trust decision under § 5 of the IRA is unavailable once title has passed to the United States, then certainly federal courts cannot construct the necessary conditions for judicial review by simply ordering the land acquisition undone.

In sum, there is no basis in precedent or in reason for a GVR in the present case. Since a federal statute has been held unconstitutional, I would grant the petition for certiorari.

No. 96–184. LIFE INSURANCE COMPANY OF GEORGIA *v.* JOHNSON. Sup. Ct. Ala. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *BMW of North America, Inc.* v. *Gore,* 517 U. S. 559 (1996). Reported below: 684 So. 2d 685.

Miscellaneous Orders

No. A–167 (96–555). REHMAN *v.* ECC INTERNATIONAL CORP. ET AL. Sup. Ct. Fla. Application for stay, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. A–208 (96–340). VAUGHN *v.* OHIO MEDICAL BOARD. Sup. Ct. Ohio. Application for stay, addressed to JUSTICE THOMAS and referred to the Court, denied.

No. A–254. MCVICAR, WARDEN *v.* GRIFFIN. C. A. 7th Cir. Application to recall the mandate, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. D–1718. IN RE DISBARMENT OF LARENE. Disbarment entered. [For earlier order herein, see 518 U. S. 1046.]

No. D–1730. IN RE DISBARMENT OF MEKLER. Arlen B. Mekler, of Wilmington, Del., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1731. IN RE DISBARMENT OF BROWN. Warren Ernest Brown, of Lafayette, La., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1732. IN RE DISBARMENT OF SILVER. Jack Silver, of Littleton, Colo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1733. In re Disbarment of Wade. William Vernon Wade, of Houston, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1734. In re Disbarment of Busby. Donald Lee Busby, of Temple, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1735. In re Disbarment of Kimes. Larry Wayne Kimes, of Austin, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–14. Emery *v.* City of Toledo;
No. M–16. Johnson *v.* Sparkman et al.;
No. M–17. Jones *v.* Nance et al.;
No. M–18. Helbling *v.* Bevere et al.;
No. M–19. Whitaker *v.* Whitaker; and
No. M–20. Doe et al. *v.* Purity Supreme, Inc., et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. M–15. Sweeney *v.* National Transportation Safety Board. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 95–897. Auer et al. *v.* Robbins et al. C. A. 8th Cir. [Certiorari granted, 518 U. S. 1016.] Motion of International Association of Chiefs of Police for leave to file a brief as *amicus curiae* granted.

No. 95–939. Immigration and Naturalization Service *v.* Elramly. C. A. 9th Cir. [Certiorari granted, 516 U. S. 1170.] Motion of California for leave to file a brief as *amicus curiae* granted *nunc pro tunc.*

No. 95–1081. Ingalls Shipbuilding, Inc., et al. *v.* Director, Office of Workers' Compensation Programs, Depart-

MENT OF LABOR, ET AL. C. A. 5th Cir. [Certiorari granted, 517 U. S. 1186.] Motion of the Acting Solicitor General for divided argument granted.

No. 95–1425. ABRAMS ET AL. *v.* JOHNSON ET AL.; and
No. 95–1460. UNITED STATES *v.* JOHNSON ET AL. D. C. S. D. Ga. [Probable jurisdiction noted, 517 U. S. 1207.] Motion of the Acting Solicitor General for divided argument granted.

No. 95–1181. DUNN ET AL. *v.* COMMODITY FUTURES TRADING COMMISSION ET AL. C. A. 2d Cir. [Certiorari granted, 517 U. S. 1219.] Motion of Foreign Exchange Committee et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 95–1448. NERNBERG *v.* LUDMER, 517 U. S. 1220. Motion of petitioner to vacate lower court order denied.

No. 95–1853. CLINTON *v.* JONES. C. A. 8th Cir. [Certiorari granted, 518 U. S. 1016.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–6510. GRAY *v.* NETHERLAND, WARDEN, 518 U. S. 152. Motion of respondent to retax costs denied.

No. 96–235. CALIFORNIA FRANCHISE TAX BOARD *v.* MACFARLANE. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 96–5534. HOFFMANN *v.* HOFFMANN. Ct. App. Md.;
No. 96–5555. VISWANATHAN *v.* SCOTLAND COUNTY BOARD OF EDUCATION ET AL. C. A. 4th Cir.;
No. 96–5818. SANDERS *v.* RAYTHEON ENGINEERS & CONSTRUCTORS, INC. C. A. 4th Cir.; and
No. 96–5882. PARARAS-CARAYANNIS *v.* UNITED STATES. C. A. 9th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 5, 1996, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 96–6003. IN RE CASTILLO. Petition for writ of habeas corpus denied.

No. 96–249. In re Moretti;
No. 96–326. In re Panthong;
No. 96–5531. In re Pallett;
No. 96–5564. In re Moore; and
No. 96–5576. In re Parrish. Petitions for writs of mandamus denied.

No. 96–5571. In re Washington. Petition for writ of prohibition denied.

Probable Jurisdiction Noted

No. 95–2024. Lawyer *v.* Department of Justice et al. Appeal from D. C. M. D. Fla. Probable jurisdiction noted. Reported below: 920 F. Supp. 1248.

Certiorari Granted

No. 95–1594. De Buono, New York Commissioner of Health, et al. *v.* NYSA-ILA Medical and Clinical Services Fund, by Its Trustees, Bowers et al. C. A. 2d Cir. Certiorari granted. Reported below: 74 F. 3d 28.

No. 95–1764. Saratoga Fishing Co. *v.* J. M. Martinac & Co. et al. C. A. 9th Cir. Certiorari granted. Reported below: 69 F. 3d 1432.

No. 95–2074. City of Boerne *v.* Flores, Archbishop of San Antonio, et al. C. A. 5th Cir. Certiorari granted. Reported below: 73 F. 3d 1352.

No. 95–1340. Hughes Aircraft Co. *v.* United States ex rel. Schumer. C. A. 9th Cir. Certiorari granted limited to Questions 1 and 2 presented by the petition. Reported below: 63 F. 3d 1512.

No. 96–243. Suitum *v.* Tahoe Regional Planning Agency. C. A. 9th Cir. Motions of Tahoe Sierra Preservation Council, Tahoe Lakefront Owners' Association, and Southeastern Legal Foundation for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 80 F. 3d 359.

Certiorari Denied

No. 95–1567. Indiana *v.* Bryant. Sup. Ct. Ind. Certiorari denied. Reported below: 660 N. E. 2d 290.

No. 95–1966. RUSSO ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 74 F. 3d 1383.

No. 95–1999. NEBRASKA *v.* RYAN. Sup. Ct. Neb. Certiorari denied. Reported below: 249 Neb. 218, 543 N. W. 2d 128.

No. 95–2007. CONSTRUCTION PRODUCTS RESEARCH, INC., ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 73 F. 3d 464.

No. 95–2038. MINCIELI *v.* BRUDER. C. A. 11th Cir. Certiorari denied. Reported below: 73 F. 3d 1107.

No. 95–9123. QUATREVINGT *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 670 So. 2d 197.

No. 95–9480. GREEN *v.* FRANCO ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–20. CARIBBEAN PETROLEUM CORP. *v.* COASTAL FUELS OF PUERTO RICO, INC.; and
No. 96–200. COASTAL FUELS OF PUERTO RICO, INC. *v.* CARIBBEAN PETROLEUM CORP. C. A. 1st Cir. Certiorari denied. Reported below: 79 F. 3d 182.

No. 96–25. EDMONDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 80 F. 3d 810.

No. 96–43. WILKINSON *v.* LEGAL SERVICES CORP. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 80 F. 3d 535.

No. 96–53. PRICE ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 F. 3d 46.

No. 96–70. COLUMBIA MACHINE, INC. *v.* SCHNIDRIG. C. A. 9th Cir. Certiorari denied. Reported below: 80 F. 3d 1406.

No. 96–73. MALONEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 71 F. 3d 645.

No. 96–91. CSX TRANSPORTATION, INC. *v.* WILSON. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 742.

No. 96–93. LEVITOFF ET AL. *v.* GLICKMAN, SECRETARY OF AGRICULTURE. C. A. 9th Cir. Certiorari denied. Reported below: 74 F. 3d 1246.

No. 96–100. Futernick, dba Holiday West Mobile Home Park et al. *v.* Caterino et al. C. A. 6th Cir. Certiorari denied. Reported below: 78 F. 3d 1051.

No. 96–102. Bradshaw *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 83 F. 3d 1175.

No. 96–123. United States *v.* Northrop Corp. et al. C. A. 9th Cir. Certiorari denied. Reported below: 69 F. 3d 545.

No. 96–135. Kevorkian *v.* Michigan. Ct. App. Mich. Certiorari denied. Reported below: 210 Mich. App. 601, 534 N. W. 2d 172.

No. 96–156. Angelone, Director, Virginia Department of Corrections, et al. *v.* Montcalm Publishing Corp. C. A. 4th Cir. Certiorari denied. Reported below: 80 F. 3d 105.

No. 96–193. Myers *v.* Burns et al. C. A. 7th Cir. Certiorari denied. Reported below: 82 F. 3d 420.

No. 96–194. Roboserve, Inc. *v.* Kato Kagaku Co., Ltd. C. A. 7th Cir. Certiorari denied. Reported below: 78 F. 3d 266.

No. 96–195. Dillard Department Stores, Inc. *v.* Harold's Stores, Inc., et al. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 1533.

No. 96–197. Rehman *v.* Garwood, McKenna, McKenna & Wolf et al. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 672 So. 2d 553.

No. 96–202. Urichich *v.* City of Youngstown et al. Ct. App. Ohio, Mahoning County. Certiorari denied.

No. 96–204. Koven et al. *v.* Pacific-Major Construction Co. et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–205. Toro *v.* Depository Trust Co. et al. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 223 App. Div. 2d 489, 636 N. Y. S. 2d 1010.

No. 96–209. Kelly Foods Corp. et al. *v.* Windmill Corp., dba Martha White Foods. C. A. 6th Cir. Certiorari denied. Reported below: 76 F. 3d 380.

No. 96–210. CAN DO, INC., PENSION AND PROFIT SHARING PLAN AND SUCCESSOR PLANS, INDIVIDUALLY AND AS TRUSTEE FOR HOLDER *v.* MANIER, HEROD, HOLLABAUGH & SMITH ET AL. Sup. Ct. Tenn. Certiorari denied. Reported below: 922 S. W. 2d 865.

No. 96–215. REED *v.* CHEVRON PIPE LINE CO. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 432.

No. 96–219. NOEL *v.* INTERNATIONAL CABLEVISION, INC., DBA ADELPHIA CABLE. C. A. 2d Cir. Certiorari denied. Reported below: 75 F. 3d 123.

No. 96–222. PAISLEY *v.* CITY OF MINNEAPOLIS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 79 F. 3d 722.

No. 96–225. WELZ *v.* NEW YORK; DRAGHI *v.* NEW YORK; DRAGHI *v.* NEW YORK; DRAGHI *v.* NEW YORK; MCSHANE ET AL. *v.* NEW YORK; and WAUGH ET AL. *v.* NEW YORK. App. Term, Sup. Ct. N. Y., 9th and 10th Jud. Dists. Certiorari denied.

No. 96–230. HANCOCK ELECTRONICS CORP. *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 451.

No. 96–231. EINHORN YAFFEE PRESCOTT ARCHITECTURE & ENGINEERING, P. C., ET AL. *v.* TURPIN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 107.

No. 96–233. ROHAN *v.* AMERICAN BAR ASSN. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 945.

No. 96–237. LOCKMILLER *v.* SUPERIOR COURT OF CALIFORNIA, SANTA CLARA COUNTY. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 96–238. EHRLICH, TRUSTEE *v.* CITY OF CULVER CITY ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 12 Cal. 4th 854, 911 P. 2d 429.

No. 96–240. UNIGARD SECURITY INSURANCE CO. *v.* BOCK, PERSONAL REPRESENTATIVE OF THE ESTATE OF BOCK, DECEASED, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 82 F. 3d 423.

No. 96–246. HEDDEN *v.* NATIONAL RAILROAD PASSENGER CORPORATION. C. A. 3d Cir. Certiorari denied.

No. 96–247. BEVIL *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 220 Ga. App. 1, 467 S. E. 2d 586.

No. 96–248. ALLGOOD, INDIVIDUALLY AND AS INDEPENDENT EXECUTRIX OF THE ESTATE OF ALLGOOD, DECEASED, ET AL. *v.* R. J. REYNOLDS TOBACCO CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 80 F. 3d 168.

No. 96–250. KHD DEUTZ OF AMERICA CORP. *v.* STEWART ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 75 F. 3d 1522.

No. 96–253. JARABE, INDIVIDUALLY AND FOR THE BENEFIT OF THE ESTATE OF JARABE, DECEASED *v.* INDUSTRIAL COMMISSION OF ILLINOIS ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 172 Ill. 2d 345, 666 N. E. 2d 1.

No. 96–254. FLYNN ET AL. *v.* KORNWOLF ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 83 F. 3d 924.

No. 96–258. HARDIN *v.* CUNNINGHAM. C. A. 5th Cir. Certiorari denied.

No. 96–259. STJERNHOLM ET UX. *v.* PETERSON ET AL. (two judgments). C. A. 10th Cir. Certiorari denied. Reported below: 83 F. 3d 347 (first judgment); 85 F. 3d 641 (second judgment).

No. 96–261. LOWERY *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 96–263. HALLGRIMSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–264. MONTANA *v.* FULLER. Sup. Ct. Mont. Certiorari denied. Reported below: 276 Mont. 155, 915 P. 2d 809.

No. 96–268. JACKSON *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1112.

No. 96–269. KOCH FUELS, INC. *v.* CLARK, RHODE ISLAND TAX ADMINISTRATOR. Sup. Ct. R. I. Certiorari denied. Reported below: 676 A. 2d 330.

No. 96–273. Pocchia *v.* Nynex Corp. et al. C. A. 2d Cir. Certiorari denied. Reported below: 81 F. 3d 275.

No. 96–275. Kennedy *v.* Goldin, Administrator, National Aeronautics and Space Administration. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1170.

No. 96–276. Rizzi *v.* Underwater Construction Corp. C. A. 6th Cir. Certiorari denied. Reported below: 84 F. 3d 199.

No. 96–278. Whitworth *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 671 So. 2d 666.

No. 96–290. Oklahoma Publishing Co. et al. *v.* Burks. C. A. 10th Cir. Certiorari denied. Reported below: 81 F. 3d 975.

No. 96–295. South Division Credit Union *v.* McFarland. C. A. 7th Cir. Certiorari denied. Reported below: 84 F. 3d 943.

No. 96–297. Parkson Corp. *v.* ACS Construction Company, Inc., of Mississippi. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 436.

No. 96–302. Edgewater Sun Spot, Inc., et al. *v.* Pennington & Haben, P. A. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 438.

No. 96–303. Human Services Plaza Partnership *v.* Huntington National Bank et al. C. A. 6th Cir. Certiorari denied. Reported below: 79 F. 3d 1148.

No. 96–305. Daley, Individually and as Personal Representative of the Estate of Hippeard *v.* Ferguson et al. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1149.

No. 96–311. Gray *v.* United States; and
No. 96–329. Olano *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1180.

No. 96–314. Schapiro *v.* Schapiro (two judgments). Super. Ct. Pa. Certiorari denied.

No. 96–332. Drummond et al. *v.* West, Secretary of the Army. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 137.

No. 96–335. HARRISON *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 177.

No. 96–346. SCIANNA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 85 F. 3d 985.

No. 96–351. COOK ET UX., INDIVIDUALLY AND DBA ANDY COOK'S TRUCK STOP *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 86 F. 3d 1095.

No. 96–352. VINES *v.* HAMILTON. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 1329.

No. 96–368. MARTINEZ *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 201 Wis. 2d 216, 549 N. W. 2d 792.

No. 96–369. RETIRED CHICAGO POLICE ASSN. *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 76 F. 3d 856.

No. 96–378. KUPCHO *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 127.

No. 96–392. SERTICH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 F. 3d 545.

No. 96–393. STOWE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 589.

No. 96–401. SCAMBOS *v.* PETRIE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 416.

No. 96–406. SIMMONS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 842.

No. 96–407. NIERENGARTEN ET UX. *v.* WISCONSIN DEPARTMENT OF HEALTH AND SOCIAL SERVICES. Ct. App. Wis. Certiorari denied. Reported below: 201 Wis. 2d 818, 549 N. W. 2d 287.

No. 96–410. GATE *v.* RUNYON, POSTMASTER GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1153.

No. 96–5047. GLENDORA *v.* MALONE. C. A. 2d Cir. Certiorari denied.

No. 96–5185. Bostic *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 429.

No. 96–5186. Raffield *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 82 F. 3d 611.

No. 96–5206. Royal *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 96–5225. Lovett *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 81 F. 3d 143.

No. 96–5246. Spires *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 42 F. 3d 645.

No. 96–5261. Williams *v.* Horner et al. C. A. 6th Cir. Certiorari denied. Reported below: 85 F. 3d 630.

No. 96–5269. Harrison *v.* Indiana. Sup. Ct. Ind. Certiorari denied. Reported below: 659 N. E. 2d 480.

No. 96–5316. Tokar *v.* Missouri. Sup. Ct. Mo. Certiorari denied. Reported below: 918 S. W. 2d 753.

No. 96–5349. Grune *v.* Thoubboron et al. C. A. 2d Cir. Certiorari denied.

No. 96–5461. Bowen *v.* Thurman, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 591.

No. 96–5462. Reeves *v.* Hopkins, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 76 F. 3d 1424.

No. 96–5473. Land *v.* Alabama. Sup. Ct. Ala. Certiorari denied. Reported below: 678 So. 2d 224.

No. 96–5477. Becker *v.* Southwest Travis County Road District No. 1. Sup. Ct. Tex. Certiorari denied.

No. 96–5479. Lee *v.* Lenhardt et al. C. A. 3d Cir. Certiorari denied.

No. 96–5484. Williams *v.* Wright, Superintendent, Maximum Control Complex, et al. C. A. 7th Cir. Certiorari denied. Reported below: 79 F. 3d 1150.

No. 96–5486. Hess *v.* Arizona. Ct. App. Ariz. Certiorari denied.

No. 96–5490. GABOR ET UX. *v.* FRAZER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 593.

No. 96–5491. HARRELL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–5492. ERICKSON *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1152.

No. 96–5508. GRAYSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 675 So. 2d 516.

No. 96–5513. DORTCH ET AL. *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 277 Ill. App. 3d 1102, 698 N. E. 2d 718.

No. 96–5515. GUILETTE *v.* MAINE DEPARTMENT OF HUMAN SERVICES. Sup. Jud. Ct. Me. Certiorari denied.

No. 96–5517. DICESARE *v.* STUART ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 425.

No. 96–5520. MASSENGALE *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 96–5522. CONE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 927 S. W. 2d 579.

No. 96–5529. SPURGETIS *v.* UNITED STATES JUDICIARY. C. A. 7th Cir. Certiorari denied.

No. 96–5530. SPENCER *v.* WHITE ET AL. C. A. 8th Cir. Certiorari denied.

No. 96–5535. HERNANDEZ *v.* EL PASO COMMUNITY COLLEGE. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 480.

No. 96–5536. HEDLUND *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 185 Ariz. 567, 917 P. 2d 1214.

No. 96–5540. SEPULVADO *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 672 So. 2d 158.

No. 96–5543. STEWARD *v.* HOFSTETTER ET AL. Ct. App. Tenn. Certiorari denied.

No. 96–5549. TART *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 672 So. 2d 116.

No. 96–5553. Wade *v.* Byles et al. C. A. 7th Cir. Certiorari denied. Reported below: 83 F. 3d 902.

No. 96–5560. Martin *v.* United States District Court for the Eastern District of California et al. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 593.

No. 96–5563. McCarthy *v.* Teta. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 108.

No. 96–5567. Jeffries *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 96–5568. Miller *v.* South Carolina et al. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 415.

No. 96–5569. McCullough *v.* Norris, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 96–5570. Vick *v.* Foote, Inc., t/a Foote Tire. C. A. 4th Cir. Certiorari denied. Reported below: 82 F. 3d 411.

No. 96–5572. Fabianich *v.* Holmes. C. A. 6th Cir. Certiorari denied. Reported below: 78 F. 3d 1041.

No. 96–5573. Green *v.* South Carolina. Ct. Common Pleas of Charleston County, S. C. Certiorari denied.

No. 96–5575. Robinson *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 96–5581. Reyes Miranda *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–5588. Rubio *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 449 Pa. Super. 726, 674 A. 2d 319.

No. 96–5593. Manning *v.* Michigan Department of Corrections et al. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 834.

No. 96–5595. Smith *v.* Arizona. Super. Ct. Ariz., Pima County. Certiorari denied.

No. 96–5596. STYLES *v.* VANZANDT, SUPERINTENDENT, WASHINGTON CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 684.

No. 96–5597. PERKINS *v.* DERSTEIN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 86 F. 3d 1166.

No. 96–5599. AUGUSTINE *v.* ROE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–5611. BOWLING *v.* CATES, CHIEF JUDGE, CIRCUIT COURT OF FLORIDA, ALACHUA COUNTY. Sup. Ct. Fla. Certiorari denied. Reported below: 676 So. 2d 412.

No. 96–5614. STONE *v.* LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–5617. WARD *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 620.

No. 96–5618. WHITE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 378, 471 S. E. 2d 593.

No. 96–5622. BARBEE *v.* PHILADELPHIA SCHOOL DISTRICT ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–5624. MORGART *v.* WORKMEN'S COMPENSATION APPEAL BOARD OF PENNSYLVANIA ET AL. Commw. Ct. Pa. Certiorari denied.

No. 96–5625. JOHNSON *v.* SHILLINGER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 91 F. 3d 159.

No. 96–5630. JOHNSON *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied.

No. 96–5646. JEFFERSON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 96–5648. HOYETT *v.* JOHNSON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–5680. DAYSE *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 74 F. 3d 1260.

No. 96–5688. PLANTE *v.* GALLANT ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 82 F. 3d 403.

No. 96–5705. COOPER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–5707. ROSENBALM *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 96–5716. COYLE *v.* WIDNALL, SECRETARY OF THE AIR FORCE. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 1313.

No. 96–5719. BERGMANN *v.* ERDMANN. Ct. App. Ind. Certiorari denied.

No. 96–5723. MILLER *v.* RUNYON, POSTMASTER GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 77 F. 3d 189.

No. 96–5737. DEBARDELEBEN *v.* HAWK, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–5738. CLARK ET UX. *v.* CITY OF PORTLAND. C. A. 9th Cir. Certiorari denied. Reported below: 85 F. 3d 634.

No. 96–5740. SHELTON *v.* LOOKER. C. A. 7th Cir. Certiorari denied.

No. 96–5742. WATKINS *v.* PARKER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 1330.

No. 96–5745. WHITE *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–5749. LAWRENCE *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 96–5756. ARMENDARIZ-MATA *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 679.

No. 96–5761. SALAHUDDIN *v.* COUGHLIN ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 222 App. Div. 2d 950, 636 N. Y. S. 2d 145.

No. 96–5762. RAINIER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 685.

No. 96–5763. SMITH *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 1194.

No. 96–5770. DONOVAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–5773. VENERI *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 450 Pa. Super. 720, 676 A. 2d 287.

No. 96–5788. WHITNEY *v.* UNITED STATES POSTAL SERVICE. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 686.

No. 96–5790. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 1329.

No. 96–5791. WALTON *v.* UNITED STATES; and
No. 96–5849. WATKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1154.

No. 96–5792. STAPLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 85 F. 3d 461.

No. 96–5795. MONTANYE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 77 F. 3d 226.

No. 96–5796. GARY *v.* PENSION FUND OF INTERNATIONAL UNION OF OPERATING ENGINEERS, #478. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 682.

No. 96–5799. RODGERS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 80 F. 3d 688.

No. 96–5801. RENTERIA-CAICEDO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1153.

No. 96–5802. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1154.

No. 96–5805. ELLISOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 1329.

No. 96–5806. HUNTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1324.

No. 96–5808. ROBLES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–5810. PULGARON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 78 F. 3d 599.

No. 96–5813. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1434.

No. 96–5814. TOLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1165.

No. 96–5815. NELSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 830.

No. 96–5820. LAPIERRE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 87 F. 3d 1309.

No. 96–5821. COBURN *v.* MORTON, SUPERINTENDENT, NEW JERSEY STATE PRISON. C. A. 3d Cir. Certiorari denied.

No. 96–5822. COOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 596.

No. 96–5823. JENSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1324.

No. 96–5825. KALASHO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 87 F. 3d 1315.

No. 96–5826. HAYNES *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 828.

No. 96–5829. ENRIQUEZ-VARELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 138.

No. 96–5830. DAWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 81 F. 3d 163.

No. 96–5834. EARLY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1323.

No. 96–5835. GAULT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 92 F. 3d 990.

No. 96–5840. EVANS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 96–5841. TCHODER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–5842. ADAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 835.

No. 96–5844. EVANS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 90 F. 3d 591.

No. 96–5846. MOOREHEAD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 96–5847. LIGHTNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 87 F. 3d 1309.

No. 96–5850. MERCER, AKA WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 89 F. 3d 851.

No. 96–5852. ROBERTSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 842.

No. 96–5853. ORNELAS-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1164.

No. 96–5858. WILLIAMSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1154.

No. 96–5861. BROWN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 96–5864. VANN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 162.

No. 96–5866. ALMONTE-NUNEZ *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 90 F. 3d 591.

No. 96–5869. BULGIER *v.* DEPARTMENT OF JUSTICE. C. A. 10th Cir. Certiorari denied. Reported below: 81 F. 3d 172.

No. 96–5871. MCCALL ET VIR *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 73 F. 3d 358.

No. 96–5874. MARGIOTTI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 85 F. 3d 100.

No. 96–5889. Matthews *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 139.

No. 96–5893. Moseley *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 418.

No. 96–5894. Parrish *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 430.

No. 96–5895. Sorenson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 171.

No. 96–5898. Nugent *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 836.

No. 96–5899. Jones *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 85 F. 3d 618.

No. 96–5907. Olachea-Jimenes *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1164.

No. 96–5909. Aldi *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 682.

No. 96–5910. Jones *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 853.

No. 96–5918. Hatney *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 80 F. 3d 458.

No. 96–5919. Aparacio-Rodriguez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1323.

No. 96–5920. Greenberg *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 438.

No. 96–5923. Hughes *v.* Smith, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1150.

No. 96–5930. Howell *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 854.

No. 96–5931. Eyoum *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 84 F. 3d 1004.

No. 96–5934. Lucas *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 92 F. 3d 1190.

No. 96–5935. Cole, aka Coleman *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 678 A. 2d 554.

No. 96–5939. Cotnam *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 88 F. 3d 487.

No. 96–5941. Duplessis *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1153.

No. 96–5942. Gardner *v.* Kentucky. Ct. App. Ky. Certiorari denied.

No. 96–5943. Downs *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 435.

No. 96–5945. Patterson *v.* Wisconsin. Ct. App. Wis. Certiorari denied.

No. 96–5946. Daniels *v.* Burke, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 760.

No. 96–5951. Brawner *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 90 F. 3d 591.

No. 96–5952. Pridgett *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 91 F. 3d 163.

No. 96–5953. Rivera *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 127.

No. 96–5954. Sirois *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 87 F. 3d 34.

No. 96–5962. Juvenile (JJAC) *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1324.

No. 96–5966. O'Brien *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 836.

No. 96–5968. Massey *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 136.

No. 96–5972. Young *v.* Lowe. C. A. 10th Cir. Certiorari denied. Reported below: 86 F. 3d 1167.

No. 96–5973. Segura-Del Real *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 275.

No. 96–5974. AUDIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1323.

No. 96–5981. FRAZIER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1323.

No. 96–5982. CARMONA DE LA TORRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 595.

No. 96–5983. GILBERT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 126.

No. 96–5987. JONES ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 433.

No. 96–5991. MILLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 83 F. 3d 434.

No. 96–5992. WILSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 96–5994. ROBINSON ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 836.

No. 96–6004. SPENCER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 854.

No. 96–6006. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 48.

No. 96–6007. CAMPBELL *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 96–6008. KAPADIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 127.

No. 96–6009. MCLAUGHLIN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 96–6010. MACK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 89 F. 3d 851.

No. 96–6011. MARTINEZ *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 227 App. Div. 2d 751, 642 N. Y. S. 2d 566.

No. 96–6012. WILLIAMS *v.* TOOMBS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 96–6015. GRANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 85 F. 3d 644.

No. 96–6017. MORRISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 853 and 854.

No. 96–6018. MARTINEZ-PEREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 78 F. 3d 598.

No. 96–6019. LACEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 86 F. 3d 956.

No. 96–6020. EWAIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 88 F. 3d 689.

No. 96–6022. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 856.

No. 96–6023. WITHROW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 85 F. 3d 527.

No. 96–6025. WOODRUP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 359.

No. 96–6033. LANGFORD *v.* LECUREUX, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 85 F. 3d 629.

No. 96–6070. LAKE *v.* HOPE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 427.

No. 95–1882. CALIFORNIA *v.* MITCHELL. Ct. App. Cal., 6th App. Dist. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 96–217. ABRAHAM, DISTRICT ATTORNEY, PHILADELPHIA COUNTY, ET AL. *v.* YOUNG. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 83 F. 3d 72.

No. 95–9341. HOGAN *v.* MCDANIEL, WARDEN. Sup. Ct. Nev. Certiorari denied. JUSTICE O'CONNOR and JUSTICE GINSBURG would grant certiorari. Reported below: 109 Nev. 952, 860 P. 2d 710.

No. 96–2. McDermott, Inc. *v.* Capital Welding & Fabrication, Inc., et al. C. A. 5th Cir. Motion of Forest Oil Corp. for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 79 F. 3d 20.

No. 96–54. Sheet Metal Workers International Assn. Local Union No. 28 *v.* Equal Employment Opportunity Commission et al. C. A. 2d Cir. Certiorari denied. Justice Thomas took no part in the consideration or decision of this petition. Reported below: 81 F. 3d 1162.

No. 96–189. Michigan *v.* Barrera et al. Sup. Ct. Mich. Motion of respondent Patrick Michael Musall for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 451 Mich. 261, 547 N. W. 2d 280.

No. 96–403. Corporation *v.* United States. C. A. 9th Cir. Motion of petitioner for leave to file information under seal granted. Certiorari denied. Reported below: 87 F. 3d 377.

October 17, 1996

Certiorari Denied

No. 96–6293 (A–263). Bush *v.* Florida. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to Justice Kennedy, and by him referred to the Court, denied. Certiorari denied. Reported below: 682 So. 2d 1099.

October 20, 1996

Miscellaneous Order

No. 96–6390 (A–283). In re Bush. Application for stay of execution of sentence of death, presented to Justice Kennedy, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 96–6373 (A–281). Bush *v.* Florida. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to Justice Kennedy, and by him referred to the Court, denied. Certiorari denied. Reported below: 682 So. 2d 85.

OCTOBER 21, 1996

Miscellaneous Orders

No. D–1702. IN RE DISBARMENT OF SCOTT. Disbarment entered. [For earlier order herein, see 518 U. S. 1038.]

No. D–1705. IN RE DISBARMENT OF GRINES. Disbarment entered. [For earlier order herein, see 518 U. S. 1038.]

No. D–1710. IN RE DISBARMENT OF SANDVOSS. Disbarment entered. [For earlier order herein, see 518 U. S. 1044.]

No. D–1713. IN RE DISBARMENT OF SPANN. Disbarment entered. [For earlier order herein, see 518 U. S. 1044.]

No. D–1716. IN RE DISBARMENT OF GROSSMAN. Disbarment entered. [For earlier order herein, see 518 U. S. 1045.]

No. D–1717. IN RE DISBARMENT OF LEVIN. Disbarment entered. [For earlier order herein, see 518 U. S. 1045.]

No. D–1736. IN RE DISBARMENT OF DU BOIS. Elliott L. Du Bois, of Chicago, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1737. IN RE DISBARMENT OF GILL. LeRoi Lionel Gill, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–21. KENNEDY ET AL. *v.* GOLDIN, ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; and

No. M–22. OROZCO ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. M–23. DOE *v.* GRIEVANCE ADMINISTRATOR, MICHIGAN ATTORNEY GRIEVANCE COMMISSION. Motion for leave to file petition for writ of certiorari using a pseudonym denied.

No. 95–897. AUER ET AL. *v.* ROBBINS ET AL. C. A. 8th Cir. [Certiorari granted, 518 U. S. 1016.] Motion of National League of Cities et al. for leave to file a brief as *amici curiae* granted.

No. 95–1425. ABRAMS ET AL. *v.* JOHNSON ET AL.; and

No. 95–1460. UNITED STATES *v.* JOHNSON ET AL. D. C. S. D. Ga. [Probable jurisdiction noted, 517 U. S. 1207.] Motion of appellees for divided argument granted.

No. 95–1455. RENO, ATTORNEY GENERAL *v.* BOSSIER PARISH SCHOOL BOARD ET AL.; and

No. 95–1508. PRICE ET AL. *v.* BOSSIER PARISH SCHOOL BOARD ET AL. D. C. D. C. [Probable jurisdiction noted, 517 U. S. 1232.] Motion of the Acting Solicitor General for divided argument granted.

No. 95–1694. REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. *v.* DOE. C. A. 9th Cir. [Certiorari granted, 518 U. S. 1004.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 96–531. LUNGREN, ATTORNEY GENERAL OF CALIFORNIA *v.* DOE; and

No. 96–547. DOE *v.* LUNGREN, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Motion of the parties to expedite consideration of petitions for writs of certiorari denied.

No. 96–6138. IN RE JAVIER ROMERO. Petition for writ of habeas corpus denied.

No. 96–354. IN RE BARDSLEY; and

No. 96–5627. IN RE HOYETT. Petitions for writs of mandamus denied.

Certiorari Granted

No. 96–292. JOHNSON ET AL. *v.* FANKELL. Sup. Ct. Idaho. Certiorari granted.

Certiorari Denied

No. 95–1439. LAKOSKI *v.* UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 751.

No. 95–1864. ELLERBEE *v.* MILLS. C. A. 11th Cir. Certiorari denied. Reported below: 78 F. 3d 600.

No. 95–2034. Schledwitz *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 72 F. 3d 130.

No. 95–8659. Hawks *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 74 F. 3d 1234.

No. 95–8992. Sparks *v.* Stutler et al. C. A. 7th Cir. Certiorari denied. Reported below: 71 F. 3d 259.

No. 95–9033. Johnson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 67 F. 3d 299.

No. 95–9133. Jones, aka Lee *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 74 F. 3d 1234.

No. 95–9221. Garrison *v.* Department of Justice. C. A. Fed. Cir. Certiorari denied. Reported below: 72 F. 3d 1566.

No. 95–9398. Lamarr et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 75 F. 3d 964.

No. 95–9485. Hascall *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 76 F. 3d 902.

No. 96–1. Thomasson *v.* Perry, Secretary of Defense, et al. C. A. 4th Cir. Certiorari denied. Reported below: 80 F. 3d 915.

No. 96–83. Simpson *v.* Kansas; and

No. 96–84. Jensen *v.* Kansas. Sup. Ct. Kan. Certiorari denied. Reported below: 259 Kan. 781, 915 P. 2d 109.

No. 96–113. Kansas Public Employees Retirement System *v.* Reimer & Koger Associates, Inc., et al. C. A. 8th Cir. Certiorari denied. Reported below: 77 F. 3d 1063.

No. 96–116. AutoZone, Inc. *v.* National Labor Relations Board et al. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 422.

No. 96–244. In re Smith. C. A. 10th Cir. Certiorari denied. Reported below: 77 F. 3d 493.

No. 96–267. Brooks *v.* George County, Mississippi, et al. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 157.

No. 96–271. Redding, Individually and as Legal Guardian of Bell, a Minor *v.* Independent School District No. 33 of Creek County, Oklahoma, et al. Ct. App. Okla. Certiorari denied.

No. 96–280. Haygood et ux. *v.* Savage, Individually and as a Law Enforcement Officer, Fayette County Sheriff's Department. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 92.

No. 96–284. Laube, dba Kim E. Laube Co. *v.* Sunbeam Corp. C. A. 3d Cir. Certiorari denied. Reported below: 85 F. 3d 613.

No. 96–286. City of Albuquerque et al. *v.* Church on the Rock et al. C. A. 10th Cir. Certiorari denied. Reported below: 84 F. 3d 1273.

No. 96–287. Klayman & Associates, P. C., et al. *v.* Baldwin Hardware Corp. C. A. Fed. Cir. Certiorari denied. Reported below: 78 F. 3d 550.

No. 96–289. Ferguson et al. *v.* F. R. Winkler GMBH & Co. KG. C. A. D. C. Cir. Certiorari denied. Reported below: 79 F. 3d 1221.

No. 96–291. Wing, Acting Commissioner, New York Department of Social Services *v.* James Square Nursing Home, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 84 F. 3d 591.

No. 96–299. Trans World Airlines, Inc., et al. *v.* Sinicropi et al. C. A. 2d Cir. Certiorari denied. Reported below: 84 F. 3d 116.

No. 96–301. Peters *v.* Louisiana. Ct. App. La., 4th Cir. Certiorari denied.

No. 96–308. Loyal American Life Insurance Co., Inc. *v.* Mattiace. Sup. Ct. Ala. Certiorari denied. Reported below: 679 So. 2d 229.

No. 96–312. United States ex rel. Devlin et al. *v.* California et al. C. A. 9th Cir. Certiorari denied. Reported below: 84 F. 3d 358.

No. 96–313. PRUITT *v.* NATIONAL CASUALTY INSURANCE CO. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 276 Ill. App. 3d 1140, 697 N. E. 2d 24.

No. 96–339. BROWN GROUP, INC., DBA BROWN SHOE CO. *v.* AARON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 80 F. 3d 1220.

No. 96–348. COTTER & CO. *v.* ILLINOIS PROPERTY TAX APPEAL BOARD ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 277 Ill. App. 3d 538, 660 N. E. 2d 1283.

No. 96–362. CAMPBELL *v.* MCCARTHY BROTHERS CO./CLARK BRIDGE, AS OWNER PRO HAC VICE OF BARGE #AEB1. C. A. 7th Cir. Certiorari denied. Reported below: 83 F. 3d 821.

No. 96–384. WYSHAK *v.* AMERICAN SAVINGS BANK, F. A., ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–398. LUCRE, INC. *v.* GIBSON COUNTY. Ct. App. Ind. Certiorari denied. Reported below: 657 N. E. 2d 150.

No. 96–424. GARZA *v.* WEEKLEY, MAYOR, CITY OF SAN BENITO. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 619.

No. 96–439. BLALOCK ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1153.

No. 96–442. MORA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 81 F. 3d 781.

No. 96–445. VEBELIUNAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 76 F. 3d 1283.

No. 96–446. WILKERSON *v.* ROSWELL LINCOLN MERCURY, INC., ET AL. Ct. App. Ga. Certiorari denied. Reported below: 219 Ga. App. XXX.

No. 96–449. JOHNSTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 78 F. 3d 599.

No. 96–453. BUCHANAN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE FOR THE ESTATE OF BUCHANAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 87 F. 3d 197.

No. 96–457. VEST ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 839.

No. 96–459. B&M FARMS ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1323.

No. 96–482. JACKSON ET UX. *v.* INTERNAL REVENUE SERVICE. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 855.

No. 96–5064. JONES *v.* PAGE, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 76 F. 3d 831.

No. 96–5128. DEMINT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 74 F. 3d 876.

No. 96–5244. DIGGS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 82 F. 3d 195.

No. 96–5315. TAYLOR *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 920 S. W. 2d 319.

No. 96–5330. LOVE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 942.

No. 96–5362. WILSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 543 Pa. 429, 672 A. 2d 293.

No. 96–5512. DAVENPORT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 11 Cal. 4th 1171, 906 P. 2d 1068.

No. 96–5640. RAYFORD *v.* BOSSE, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 96–5642. DIAZ *v.* DUCKWORTH, SUPERINTENDENT, INDIANA STATE REFORMATORY. C. A. 7th Cir. Certiorari denied.

No. 96–5643. HUSSEIN *v.* RABAN SUPPLY CO. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 593.

No. 96–5644. LAWAL *v.* COBB COUNTY BOARD OF HEALTH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 85 F. 3d 644.

No. 96–5654. ROACH *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 251 Va. 324, 468 S. E. 2d 98.

No. 96–5661. THOMAS *v.* ROGERS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 418.

No. 96–5662. MEADOWS *v.* HAYLING ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 82 F. 3d 405.

No. 96–5663. TESCIUBA *v.* KOCH, FORMER MAYOR OF CITY OF NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 215 App. Div. 2d 222, 626 N. Y. S. 2d 164.

No. 96–5666. BISHOP *v.* STATE BAR OF GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 96–5672. HAYNES *v.* PATTERSON. C. A. 11th Cir. Certiorari denied.

No. 96–5674. TOBIAS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 96–5677. JAMES *v.* RYAN. C. A. 11th Cir. Certiorari denied.

No. 96–5678. MARCUM *v.* MCANINCH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 418.

No. 96–5682. THOMAS *v.* ADAMS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 96–5684. TOBIAS *v.* YOUNG, JUDGE, DISTRICT COURT OF TEXAS, TARRANT COUNTY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 433.

No. 96–5690. STEELE *v.* CALIFORNIA DEPARTMENT OF SOCIAL SERVICES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1154.

No. 96–5693. WILLIAMS *v.* FOUNTAIN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 372.

No. 96–5694. WILLIAMS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 223 App. Div. 2d 491, 637 N. Y. S. 2d 379.

No. 96–5695. MARKS *v.* ROBERTS, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 96–5696. Bigpond *v.* Champion, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 425.

No. 96–5697. Jemzura *v.* New York State Electric & Gas Corp. et al. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 684.

No. 96–5698. Blackiston *v.* Johnson et al. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 122.

No. 96–5702. Parham *v.* PepsiCo, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1151.

No. 96–5708. Mendenhall *v.* Alaska et al. C. A. 9th Cir. Certiorari denied.

No. 96–5736. Davis *v.* Freeman, Secretary, North Carolina Department of Correction, et al. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1149.

No. 96–5741. Brown *v.* Ferguson, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 87 F. 3d 1327.

No. 96–5765. Zeitvogel *v.* Bowersox, Superintendent, Potosi Correctional Center. C. A. 8th Cir. Certiorari denied. Reported below: 84 F. 3d 276.

No. 96–5775. Carmen et ux. *v.* Mayo Foundation et al. C. A. 8th Cir. Certiorari denied. Reported below: 81 F. 3d 165.

No. 96–5778. Barrett *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 164, 469 S. E. 2d 888.

No. 96–5798. Henderson *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 171 Ill. 2d 124, 662 N. E. 2d 1287.

No. 96–5803. Rojas *v.* Ohio. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 96–5812. Stadler *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 919 P. 2d 439.

No. 96–5828. Lugo *v.* Rocha, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 169.

No. 96–5845. LOWE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 96–5880. RICHARDSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1155.

No. 96–5883. PRECHTL *v.* WITKOWSKI, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 79 F. 3d 1141.

No. 96–5884. ODOMS *v.* HATCHER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 428.

No. 96–5902. BELL *v.* OHIO. Ct. App. Ohio, Scioto County. Certiorari denied.

No. 96–5922. GOUDY *v.* BAKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 96–5929. EGBERT *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 668 So. 2d 611.

No. 96–5932. HERRERA *v.* NEW MEXICO DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 426.

No. 96–5936. BIERLEY *v.* FRANZ, DISTRICT DIRECTOR, PENNSYLVANIA BOARD OF PROBATION AND PAROLE. C. A. 3d Cir. Certiorari denied.

No. 96–5963. RESETAR *v.* LYMAN. Ct. Sp. App. Md. Certiorari denied. Reported below: 107 Md. App. 749.

No. 96–5967. McBRIDE *v.* CIRCUIT COURT OF VIRGINIA, CITY OF NORFOLK. Sup. Ct. Va. Certiorari denied.

No. 96–6016. GREEN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 44 M. J. 93.

No. 96–6028. AZHOCAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 170.

No. 96–6029. ALTAMIRANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 912.

No. 96–6030. CAMPBELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 126.

No. 96–6031. Bedonie *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1163.

No. 96–6034. Vega-Fleites *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 853.

No. 96–6036. Amen-Ra, fka Tasby *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 96–6046. Bell *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 86 F. 3d 820.

No. 96–6051. Rosch *v.* United States Parole Commission et al. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 839.

No. 96–6052. Roston *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 430.

No. 96–6053. Prado *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1436.

No. 96–6054. Palacios *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 854.

No. 96–6057. Green *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 80 F. 3d 688.

No. 96–6058. Holub *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 847.

No. 96–6062. Tellier et al. *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 83 F. 3d 578.

No. 96–6065. Battle *v.* Connecticut. App. Ct. Conn. Certiorari denied. Reported below: 39 Conn. App. 742, 667 A. 2d 1288.

No. 96–6067. Tavares *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 93 F. 3d 10.

No. 96–6068. Wellington *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 79 F. 3d 1142.

No. 96–6072. Mihaly *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 87 F. 3d 1327.

No. 96–6074. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 87 F. 3d 247.

No. 96–6077. MITCHELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 731.

No. 96–6080. STROTHERS ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 77 F. 3d 1389.

No. 96–6091. LINDLEY ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1324.

No. 96–6097. GARRETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 1296.

No. 96–6098. HINES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1170.

No. 96–6099. ANDERSON ET AL. *v.* UNITED STATES; and CABRERA-BAEZ *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 82 F. 3d 436 (first judgment); 84 F. 3d 1453 (second judgment).

No. 96–6100. SPEIGHT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 671 A. 2d 442.

No. 96–6102. RAMOS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1174.

No. 96–6103. PALMER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 156.

No. 96–6104. SHRESTHA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 847.

No. 96–6105. DUSENBERY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 836.

No. 96–6106. MONTALVO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 74 F. 3d 1247.

No. 96–6109. TOWNSEND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1325.

No. 96–6402 (A–290). BUSH *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to

JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

Rehearing Denied

No. 96–6390. IN RE BUSH, *ante,* p. 945. Petition for rehearing denied.

OCTOBER 29, 1996

Miscellaneous Order

No. A–298. FOREMAN ET AL. *v.* DALLAS COUNTY, TEXAS, ET AL. D. C. N. D. Tex. Application for injunction and stay pending appeal, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

OCTOBER 30, 1996

Dismissal Under Rule 46

No. 95–1936. STOLLER *v.* UNITED STATES. C. A. 1st Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 78 F. 3d 710.

NOVEMBER 1, 1996

Certiorari Granted

No. 96–79. BOGGS *v.* BOGGS ET AL. C. A. 5th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, December 6, 1996. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before noon, Tuesday, December 31, 1996. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 10, 1997. This Court's Rule 29.2 does not apply. Reported below: 82 F. 3d 90.

No. 96–270. AMCHEM PRODUCTS, INC., ET AL. *v.* WINDSOR ET AL. C. A. 3d Cir. Motions of Chamber of Commerce of the United States of America et al. and National Association of Manufacturers for leave to file briefs as *amici curiae* granted. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, December 16, 1996. Briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 15, 1997. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. JUSTICE O'CONNOR took no part in the consideration or decision of these motions and this petition and will take no part in the consideration or decision of this case. Reported below: 83 F. 3d 610.

No. 96–320. METRO-NORTH COMMUTER RAILROAD CO. *v.* BUCKLEY. C. A. 2d Cir. Motions for leave to file briefs as *amici curiae* filed by the following are granted: Association of American Railroads, Consolidated Rail Corporation, American Tort Reform Association, Washington Legal Foundation, Port Authority of New York and New Jersey, and Defense Research Institute. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, December 16, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 15, 1997. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 79 F. 3d 1337.

No. 96–5658. LAMBRIX *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, December 6, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before noon, Tuesday, December 31, 1996. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 10, 1997. This Court's Rule 29.2 does not apply. Reported below: 72 F. 3d 1500.

NOVEMBER 2, 1996

Miscellaneous Order

No. A–310. ARKANSAS TERM LIMITS ET AL. *v.* DONOVAN ET AL.; and

No. A–320. PRIEST, SECRETARY OF STATE OF ARKANSAS *v.* DONOVAN ET AL. Applications for stay of decision and mandate of the Supreme Court of Arkansas, case No. 96–1120, decided October 21, 1996, presented to JUSTICE THOMAS, and by him referred to the Court, granted pending the timely filing and disposition by this Court of a petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court. JUSTICE STEVENS and JUSTICE GINSBURG would deny the applications.

NOVEMBER 4, 1996

Certiorari Granted—Vacated and Remanded. (See No. 95–2025, *ante,* p. 2.)

Miscellaneous Orders

No. A–688 (O. T. 1995). KLECAN ET AL. *v.* NEW MEXICO RIGHT TO CHOOSE ET AL. Dist. Ct. N. M., Santa Fe County. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. A–194. HOOK *v.* MCDADE, UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF ILLINOIS. D. C. C. D. Ill. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A–303. ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS *v.* BENNETT. Application to vacate the stay of execution of sentence of death granted by the United States Court of Appeals for the Fourth Circuit on October 23, 1996, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted.

JUSTICE STEVENS, dissenting.

A procedural issue of greater importance than the timing of respondent's execution is presented by the application to vacate the stay entered by the Court of Appeals. In Title I of the Antiterrorism and Effective Death Penalty Act of 1996, 110 Stat. 1217, Congress significantly limited the authority of the federal courts to entertain second or successive habeas corpus applications by state prisoners. See *Felker* v. *Turpin,* 518 U. S. 651 (1996). That action by Congress increases the importance of making sure that the courts have a full and fair opportunity to consider the first federal petition filed by such prisoners.

In this case, the Director of the Virginia Department of Corrections has asked this Court to take the extraordinary step of vacating a stay that the Court of Appeals had entered to enable a death row inmate to have the time available to all other litigants to file a petition for certiorari to review the denial of his first federal habeas corpus petition. Evenhanded administration of this Court's Rules counsels against action that affords such special treatment to the director. Moreover, the Court's decision to vacate the stay creates a precedent that will invite wardens generally to ask us routinely to expedite our processing of certiorari petitions in similar cases. Given the irreparable consequences of error in a capital case, I believe we should steadfastly resist the temptation to endorse procedural shortcuts that can only increase the risk of error. In response to the congressional decision effectively to limit death row inmates to one meaningful opportunity to obtain federal habeas corpus relief, we should give greater, rather than less, scrutiny to a death row inmate's allegations in his first federal habeas petition.

Accordingly, I respectfully dissent.

JUSTICE BREYER, with whom JUSTICE GINSBURG joins, dissenting.

Our cases make clear that a court of appeals should grant a stay (to permit application for a writ of certiorari) only in a special case—a case presenting a significant likelihood of a grant. *E. g., Netherland* v. *Tuggle*, 515 U. S. 951 (1995). There is no reason to believe that the Court of Appeals was unaware of the *Tuggle* standard when it granted the motion to stay Bennett's execution. Even if it mispredicted this Court's eventual view of the case, it did not act unreasonably in doing so. See 92 F. 3d 1336, 1345 (CA4 1996) (describing the prosecutor's closing argument at Bennett's trial as "highly improper" and deserving "strong condemnation"). Further, the Court of Appeals issued its stay to permit this Court to review a *first* habeas petition. The petitioner, in other words, simply has used, not abused, the writ. Cf. 28 U. S. C. § 2244(b) (placing strict limits on subsequent habeas corpus applications).

Given these circumstances, I can find no special reason for this Court to curtail the certiorari time normally available or, in effect, to make its certiorari decision on a schedule determined by the State's execution timetable, rather than by this Court's Rules. Compare this Court's Rule 13.1 (providing for 90-day filing period) with Va. Code Ann. § 53.1–232.1 (Supp. 1996) (providing for maximum 60-day period before execution). Thus, I would permit this stay of execution to remain in place pending the filing and consideration of Bennett's petition for certiorari.

No. D–1708. In re Disbarment of Lehman. Disbarment entered. [For earlier order herein, see 518 U. S. 1044.]

No. D–1709. In re Disbarment of Hoare. Disbarment entered. [For earlier order herein, see 518 U. S. 1044.]

No. D–1711. In re Disbarment of Essrick. Disbarment entered. [For earlier order herein, see 518 U. S. 1044.]

No. D–1715. In re Disbarment of Gribetz. Disbarment entered. [For earlier order herein, see 518 U. S. 1045.]

No. D–1720. In re Disbarment of Bertagnolli. Disbarment entered. [For earlier order herein, see 518 U. S. 1049.]

No. D–1738. In re Disbarment of Brown. Victor L. Brown, of Los Angeles, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1739. In re Disbarment of McDaniels. Edison Penrow McDaniels, of San Bernardino, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1740. In re Disbarment of Cronin. Clinton E. Cronin, of Toms River, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1741. In re Disbarment of Atkins. Wilbur Dawkins Atkins, Jr., of Baton Rouge, La., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–24. Credit Counseling Centers of America, Inc. *v.* Credit Counseling Centers; and

No. M–28. KRAMER *v.* CITY OF WICHITA, KANSAS. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. M–25. CORPORACION DE EXPORTACIONES MEXICANAS USA, INC., ET AL. *v.* FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION ET AL. Motion of petitioners to dispense with printing the petition for writ of certiorari denied.

No. M–26. CORPORACION DE EXPORTACIONES MEXICANAS USA, INC., ET AL. *v.* FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION ET AL. Motion to direct the Clerk to file petition for writ of certiorari by a nonattorney on behalf of a corporation denied.

No. M–27. IN RE TOMASIN. Motion to direct the Clerk to file petition for writ of mandamus and other relief denied.

No. M–29. DUFF, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS *v.* GOVERNOR OF ILLINOIS ET AL. Motion of petitioner to waive requirements of this Court's Rule 33.1 denied.

No. 95–1232. GENERAL MOTORS CORP. *v.* TRACY, TAX COMMISSIONER OF OHIO. Sup. Ct. Ohio. [Certiorari granted, 517 U. S. 1118.] Motion of respondent to strike petitioner's lodging denied.

No. 95–1605. UNITED STATES *v.* GONZALES ET AL. C. A. 10th Cir. [Certiorari granted, 518 U. S. 1003.] Motion for appointment of counsel granted, and it is ordered that Roberto Albertorio, Esq., of Albuquerque, N. M., be appointed to serve as counsel for respondent Mario Perez in this case.

No. 95–5661. MELENDEZ *v.* UNITED STATES, 518 U. S. 120. Motion for appointment of counsel *nunc pro tunc* granted, and it is ordered that Patrick A. Mullin, Esq., of Hackensack, N. J., be appointed to serve as counsel for petitioner.

No. 96–529. IN RE PUNCHARD; and
No. 96–6210. IN RE RANDY. Petitions for writs of habeas corpus denied.

No. 96–6050. IN RE VEY; and
No. 96–6176. IN RE WILLIAMS. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Denied

No. 95–2072. SZENAY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 95–2091. SHARP ET AL. *v.* MYERS, INDIVIDUALLY, AND AS ADMINISTRATRIX OF THE ESTATE OF MYERS, DECEASED, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 80 F. 3d 421.

No. 95–9119. RUIZ ET AL. *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 71 F. 3d 1404.

No. 95–9216. BENNETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 78 F. 3d 598.

No. 95–9222. NICKELSON *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 75 Ohio St. 3d 10, 661 N. E. 2d 168.

No. 95–9282. MELVIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 78 F. 3d 327.

No. 95–9320. CUCH *v.* UNITED STATES; and
No. 95–9373. APPAWOO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 79 F. 3d 987.

No. 95–9336. HEDRICK *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 95–9420. SPRING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 80 F. 3d 1450.

No. 95–9445. HARRISON *v.* FLOYD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 73 F. 3d 357.

No. 96–11. CAL-ALMOND, INC., ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 73 F. 3d 381.

No. 96–140. SOBOCINSKI *v.* OFFICE OF PERSONNEL MANAGEMENT ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 79 F. 3d 1167.

No. 96–160. KENTUCKY STATE POLICE DEPARTMENT ET AL. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 80 F. 3d 1086.

No. 96–168. SNYDER, SPECIAL ADMINISTRATOR OF THE ESTATE OF LOVETT, DECEASED *v.* VIANI, INDIVIDUALLY AND DBA

JOE'S TAVERN, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 568, 916 P. 2d 170.

No. 96–172. HOLLAND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 75 F. 3d 252.

No. 96–186. REESE ET AL. *v.* CITY OF COLUMBUS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 71 F. 3d 619.

No. 96–207. SALYER *v.* OHIO BUREAU OF WORKERS' COMPENSATION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 784.

No. 96–216. MAIETTA *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 84 F. 3d 100.

No. 96–245. EDWARDS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 107 Md. App. 740.

No. 96–265. SUNENBLICK, DBA UPTOWN RECORDS *v.* HARRELL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 684.

No. 96–300. ADAMS ET AL. *v.* CUMBERLAND FARMS, INC. C. A. 1st Cir. Certiorari denied. Reported below: 86 F. 3d 1146.

No. 96–307. SAPP *v.* POWER COMPUTING CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 623.

No. 96–309. FAIRWAY FOODS, INC., ET AL. *v.* MINNESOTA ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 546 N. W. 2d 285.

No. 96–316. LOUISIANA EX REL. IEYOUB, ATTORNEY GENERAL OF LOUISIANA *v.* CIGNA HEALTHPLAN OF LOUISIANA, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 642.

No. 96–324. RILEY ET AL. *v.* MURDOCK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 415.

No. 96–325. RUIZ *v.* SOUTHERN PACIFIC TRANSPORTATION CO. Ct. App. Utah. Certiorari denied.

No. 96–328. WILSON CORP. ET AL. *v.* UDALL, ATTORNEY GENERAL OF NEW MEXICO. Ct. App. N. M. Certiorari denied. Reported below: 121 N. M. 677, 916 P. 2d 1344.

No. 96–331. MOORE, ATTORNEY GENERAL OF MISSISSIPPI *v.* INGEBRETSEN, ON BEHALF OF HIMSELF AND HIS DAUGHTER, INGEBRETSEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 88 F. 3d 274.

No. 96–333. SIMPLY FRESH FRUIT, INC., ET AL. *v.* CONTINENTAL INSURANCE CO. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 1219.

No. 96–336. ELIASEN ET AL. *v.* ITEL CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 82 F. 3d 731.

No. 96–338. KAHN *v.* BEICKER ENGINEERING, INC., ET AL. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 96–340. VAUGHN *v.* OHIO MEDICAL BOARD. Sup. Ct. Ohio. Certiorari denied. Reported below: 75 Ohio St. 3d 1449, 663 N. E. 2d 330.

No. 96–342. UNITED STATES *v.* WABASH VALLEY POWER ASSN., INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 72 F. 3d 1305.

No. 96–344. BERNKLAU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 109.

No. 96–347. DOWNHOUR ET AL. *v.* SOMANI, DIRECTOR, OHIO DEPARTMENT OF HEALTH. C. A. 6th Cir. Certiorari denied. Reported below: 85 F. 3d 261.

No. 96–349. MUSICK ET AL. *v.* GOODYEAR TIRE & RUBBER CO., INC. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 136.

No. 96–357. SPRECHER *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 81 F. 3d 1147.

No. 96–363. QUISENBERRY *v.* COUNTY COLLECTION SERVICES, INC., ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 675 So. 2d 138.

No. 96–366. DESNICK *v.* ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 171 Ill. 2d 510, 665 N. E. 2d 1346.

No. 96–380. Barry *v.* Burdines et al. Sup. Ct. Fla. Certiorari denied. Reported below: 675 So. 2d 587.

No. 96–383. Lincoln Loan Co. *v.* City of Portland. Ct. App. Ore. Certiorari denied. Reported below: 138 Ore. App. 688, 909 P. 2d 1243.

No. 96–390. Swiftships, Inc. *v.* Loral Corp. C. A. 11th Cir. Certiorari denied. Reported below: 77 F. 3d 420.

No. 96–411. Systems Fuel, Inc., et al. *v.* Alexander. Sup. Ct. La. Certiorari denied. Reported below: 669 So. 2d 1229.

No. 96–416. Hasenstab *v.* New York City. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 942.

No. 96–421. Kuntz *v.* Fadness, Individually and as Successor in Trust for Fadness. Sup. Ct. Mont. Certiorari denied.

No. 96–441. Todd *v.* Alaska. Sup. Ct. Alaska. Certiorari denied. Reported below: 917 P. 2d 674.

No. 96–444. Suarez Corporation Industries *v.* West Virginia, By and Through McGraw, Attorney General. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 196 W. Va. 346, 472 S. E. 2d 792.

No. 96–473. Brighton Management Services, Inc., et al. *v.* Philadelphia Tax Review Board. Commw. Ct. Pa. Certiorari denied. Reported below: 667 A. 2d 757.

No. 96–480. Jenkins *v.* National Labor Relations Board. C. A. 2d Cir. Certiorari denied.

No. 96–489. Gray *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 436.

No. 96–490. Pipes *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 87 F. 3d 840.

No. 96–492. Rothenberg *v.* Ruzicka. C. A. 8th Cir. Certiorari denied. Reported below: 83 F. 3d 1033.

No. 96–505. Lindemann *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 85 F. 3d 1232.

No. 96-515. Story *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 86 F. 3d 647.

No. 96-518. Jordan *v.* Hargett, Superintendent, Mississippi State Penitentiary, et al. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 48.

No. 96-5052. Williams *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 77 F. 3d 1098.

No. 96-5232. Sanchez *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 169 Ill. 2d 472, 662 N. E. 2d 1199.

No. 96-5335. Butler *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 74 F. 3d 916.

No. 96-5365. Ray *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 13 Cal. 4th 313, 914 P. 2d 846.

No. 96-5366. Spears *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 184 Ariz. 277, 908 P. 2d 1062.

No. 96-5374. Roquemore *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 837.

No. 96-5417. Thigpen *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 79 F. 3d 1159.

No. 96-5441. Bottoson *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 674 So. 2d 621.

No. 96-5481. Thompson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 1572.

No. 96-5689. Schurz *v.* Arizona. Sup. Ct. Ariz. Certiorari denied.

No. 96-5706. Rashid *v.* Society Hill Savings and Loan Assn. C. A. 3d Cir. Certiorari denied. Reported below: 85 F. 3d 612.

No. 96-5715. Hoversten *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96-5725. Johnson *v.* Brown et al. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1319.

No. 96–5728. TURENTINE *v.* MILLER, SUPERINTENDENT, CORRECTIONAL INDUSTRIAL COMPLEX, PENDLETON, INDIANA. C. A. 7th Cir. Certiorari denied. Reported below: 80 F. 3d 222.

No. 96–5732. MITCHELL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–5734. FORD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 96–5739. HAMMONS *v.* PRESTO ROOFING CO., INC. Sup. Ct. Mo. Certiorari denied. Reported below: 916 S. W. 2d 797.

No. 96–5750. CHAMBERS *v.* HALFORD, DIRECTOR, IOWA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied.

No. 96–5757. CITIZEN *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 623.

No. 96–5760. WAINWRIGHT *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 80 F. 3d 1226.

No. 96–5766. WUORNOS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 676 So. 2d 966.

No. 96–5780. LU *v.* TURK ET AL. App. Ct. Mass. Certiorari denied.

No. 96–5781. LABICKAS *v.* ARKANSAS STATE UNIVERSITY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 333.

No. 96–5782. KULICK *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 96–5783. MONTANEZ *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1200.

No. 96–5784. LOGAN *v.* BEAM, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 131.

No. 96–5797. DOMINGUES *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 683, 917 P. 2d 1364.

No. 96–5800. RHOTON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 96–5804. HOOPER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 172 Ill. 2d 64, 665 N. E. 2d 1190.

No. 96–5807. HILL *v.* CITY & STATE FACTORS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 437.

No. 96–5809. SMITH *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 1392.

No. 96–5811. O'BRIEN *v.* EMPLOYMENT APPEAL BOARD ET AL. Sup. Ct. Iowa. Certiorari denied. Reported below: 550 N. W. 2d 737.

No. 96–5816. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 669 So. 2d 253.

No. 96–5817. OWUSU *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1151.

No. 96–5819. SMITH *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 846.

No. 96–5824. WILLIAMS *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 831.

No. 96–5827. ELLISON *v.* MITCHELL, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 96–5832. HERLOSKI *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 96–5836. HOLLAR *v.* MYERS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 149.

No. 96–5837. BURNETT *v.* WOODS ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–5838. UMAR *v.* MCVEA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 157.

No. 96–5839. CARL *v.* WHITE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 96–5843. Brown *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 172 Ill. 2d 1, 665 N. E. 2d 1290.

No. 96–5854. Stewart *v.* Texas Board of Pardons and Paroles et al. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 477.

No. 96–5855. Sanchez *v.* Santa Cruz County et al. C. A. 9th Cir. Certiorari denied.

No. 96–5856. Rust et al. *v.* Clarke et al. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 841.

No. 96–5863. Wilson *v.* McCloud et al. C. A. 5th Cir. Certiorari denied.

No. 96–5867. McConico *v.* Alabama. Sup. Ct. Ala. Certiorari denied.

No. 96–5868. Armentrout *v.* Missouri. Sup. Ct. Mo. Certiorari denied.

No. 96–5870. Cotten *v.* Casler et al. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 422.

No. 96–5872. Jackson *v.* Jones, Warden. C. A. 11th Cir. Certiorari denied.

No. 96–5873. Lowe *v.* Holy Cross Hospital et al. Ct. Sp. App. Md. Certiorari denied. Reported below: 108 Md. App. 723.

No. 96–5875. Mahapatra *v.* Mahapatra (two judgments). App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 224 App. Div. 2d 960, 638 N. Y. S. 2d 367.

No. 96–5879. Smith *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 915 P. 2d 927.

No. 96–5885. Singla et al. *v.* Department of Health and Human Services et al. C. A. 2d Cir. Certiorari denied.

No. 96–5887. Kashannejad *v.* Pickett, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 96–5901. Martinez *v.* Federal Deposit Insurance Corporation et al. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 138.

No. 96–5903. Scott *v.* Singletary, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 96–5905. Brown *v.* Moore, Director, South Carolina Department of Corrections, et al. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1148.

No. 96–5911. Cheatham *v.* Schneider, Governor of the Virgin Islands, et al. C. A. 3d Cir. Certiorari denied. Reported below: 85 F. 3d 611.

No. 96–5912. Jones *v.* Texas Commerce Bank. Sup. Ct. Va. Certiorari denied.

No. 96–5914. Day *v.* Ohio. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 96–5940. Fields *v.* Hinkle, Warden. Sup. Ct. Va. Certiorari denied.

No. 96–5948. Lipton *v.* Swest, Inc., et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–5956. Aziz *v.* Schriro, Director, Missouri Department of Corrections, et al. C. A. 8th Cir. Certiorari denied.

No. 96–5957. McCabe *v.* Department of the Air Force et al. C. A. 9th Cir. Certiorari denied.

No. 96–5969. Lipofsky *v.* New York State Insurance Fund. C. A. 2d Cir. Certiorari denied. Reported below: 86 F. 3d 15.

No. 96–5993. Johnson *v.* Griffin et al. Sup. Ct. Wyo. Certiorari denied. Reported below: 922 P. 2d 860.

No. 96–5995. March *v.* Brown, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 74 F. 3d 1260.

No. 96–5997. Ash *v.* Swest, Inc., et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–6014. Harmon *v.* Hargett, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 85 F. 3d 640.

No. 96–6021. VAUGHAN *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 842.

No. 96–6024. VON DOHLEN *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 322 S. C. 234, 471 S. E. 2d 689.

No. 96–6044. STANTON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 96–6045. LARRY *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied.

No. 96–6059. GILLIARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1435.

No. 96–6073. NELSON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 96–6081. RICHARDSON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 923 S. W. 2d 301.

No. 96–6084. PITTS *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 85 F. 3d 348.

No. 96–6086. BROWN-KIMBLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 846.

No. 96–6111. CORRALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 157.

No. 96–6113. CHINN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 89 F. 3d 851.

No. 96–6116. NELSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 830.

No. 96–6118. WINSLOW *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 390.

No. 96–6119. TIDWELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 92 F. 3d 540.

No. 96–6121. STEPHANS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 95 F. 3d 500.

No. 96–6122. PAYTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 1195.

No. 96–6127. FRANKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 45.

No. 96–6128. ESTEBAN MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 46.

No. 96–6131. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 84 F. 3d 1206.

No. 96–6134. RAMIREZ-FERRER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 82 F. 3d 1149.

No. 96–6140. ADAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 1371.

No. 96–6141. BAEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 87 F. 3d 805.

No. 96–6144. POLANCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 93 F. 3d 555.

No. 96–6145. PRITCHETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 48.

No. 96–6146. LYNCH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 86 F. 3d 1147.

No. 96–6147. MATTHEWS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 50.

No. 96–6149. ROACH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 47.

No. 96–6150. LUNDIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 82 F. 3d 582.

No. 96–6151. JAMAL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 87 F. 3d 913.

No. 96–6154. PATCH *v.* RICHARDSON, COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 96 F. 3d 1439.

No. 96–6155. WILLIAMS *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 922 S. W. 2d 845.

No. 96–6156. THIMM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 430.

No. 96–6157. MCCONAGHY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 91 F. 3d 163.

No. 96–6158. MOHR *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1732.

No. 96–6164. RUTHERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 82 F. 3d 411.

No. 96–6166. VALENZUELA RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 46.

No. 96–6167. SORENSEN *v.* MAHONEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1322.

No. 96–6171. JURI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 91 F. 3d 162.

No. 96–6174. JOOST *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 94 F. 3d 640.

No. 96–6178. HOGAN *v.* CARTER. C. A. 4th Cir. Certiorari denied. Reported below: 85 F. 3d 1113.

No. 96–6179. HAWKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 722.

No. 96–6181. GREEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 657.

No. 96–6182. GREIF *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 155.

No. 96–6183. ACEVEDO GUTIERREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 89 F. 3d 851.

No. 96–6186. DIETSCH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 123.

No. 96–6187. HAZELETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 80 F. 3d 280.

No. 96–6194. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 87 F. 3d 909.

No. 96–6195. WOODALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 1147.

No. 96–6198. WOODFOLK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 87 F. 3d 1310.

No. 96–6200. CHAUDHRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 82 F. 3d 411.

No. 96–6202. PORTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1154.

No. 96–6203. SCHOENBOHM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–6206. VIGILANTE *v.* IRVIN, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 687.

No. 96–6208. WEITERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 91 F. 3d 163.

No. 96–6209. THOMPSON *v.* CRABTREE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 82 F. 3d 312.

No. 96–6212. COHEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 96–6219. VALDEZ-ANGUIANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 139.

No. 96–6222. LOPEZ CAMACHO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1323.

No. 96–6224. STEPP *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 145.

No. 96–6228. RUSSELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1200.

No. 96–6229. SIMPSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 94 F. 3d 1373.

No. 96–6231. THRONEBURG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 87 F. 3d 851.

No. 96–6235. PERKINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 91 F. 3d 160.

No. 96–6237. PHEA *v.* BENSON, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 95 F. 3d 660.

No. 96–6239. JUAREZ-MORENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 156.

No. 96–6247. KISALA *v.* JENNY CRAIG WEIGHT LOSS CENTRES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1179.

No. 96–6252. WEST *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 95 F. 3d 1153.

No. 96–185. SAKARIA ET AL. *v.* DARE COUNTY BOARD OF EDUCATION. Sup. Ct. N. C. Motions of American Homeowners Foundation et al. and Clarendon Foundation et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 342 N. C. 648, 466 S. E. 2d 717.

No. 96–229. JORDAN *v.* VALDEZ, DISTRICT ATTORNEY FOR NEUCES AND KLEBERG COUNTIES, ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed as a veteran pursuant to this Court's Rule 40 granted. Certiorari denied. Reported below: 84 F. 3d 729.

No. 96–321. KAYSER-ROTH CORP. *v.* SARA LEE CORP. C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 81 F. 3d 455.

No. 96–343. VILLAGE OF SCHAUMBURG *v.* AMOCO OIL CO. App. Ct. Ill., 1st Dist. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 277 Ill. App. 3d 926, 661 N. E. 2d 380.

No. 96–531. LUNGREN, ATTORNEY GENERAL OF CALIFORNIA *v.* DOE; and

No. 96–547. DOE *v.* LUNGREN, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari before judgment denied.

No. 96–5892 (A–260). IVERSON ET AL. *v.* GRANT ET AL. C. A. 8th Cir. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied. Certiorari before judgment denied.

Rehearing Denied

No. 95–8827. Hofmann *v.* Pressman Toy Corp. et al., *ante,* p. 828; and

No. 96–5260. Wallace *v.* United States, *ante,* p. 888. Petitions for rehearing denied.

No. 93–1314. Tauber *v.* Salomon Forex, Inc., et al., 511 U. S. 1031 and 1138. Motion for leave to file second petition for rehearing denied.

No. 95–8784. Page *v.* Runyon, Postmaster General, 518 U. S. 1024. Motion for leave to file petition for rehearing denied.

November 7, 1996

Certiorari Denied

No. 96–6510 (A–314). Payne *v.* Netherland, Warden, et al. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to The Chief Justice, and by him referred to the Court, denied. Certiorari denied. Justice Stevens and Justice Ginsburg would grant the application for stay of execution. Reported below: 94 F. 3d 642.

November 8, 1996

Certiorari Granted

No. 96–262. Edmond *v.* United States; Lazenby *v.* United States; Leaver *v.* United States; Leonard *v.* United States; Nichols *v.* United States; and Venable *v.* United States. C. A. Armed Forces. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, December 23, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 22, 1997. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 45 M. J. 19 (first judgment); 44 M. J. 273 (second, third, fifth, and sixth judgments), and 272 (fourth judgment).

NOVEMBER 12, 1996

Vacated and Remanded on Appeal

No. 96–146. KING *v.* ILLINOIS BOARD OF ELECTIONS ET AL. Appeal from D. C. N. D. Ill. Judgment vacated, and case remanded for further consideration in light of *Shaw* v. *Hunt,* 517 U. S. 899 (1996), and *Bush* v. *Vera,* 517 U. S. 952 (1996). Reported below: 979 F. Supp. 582.

Miscellaneous Orders

No. A–299. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* IOWA UTILITIES BOARD ET AL. Application to vacate the stay issued by the United States Court of Appeals for the Eighth Circuit, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. A–300. ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES ET AL. *v.* IOWA UTILITIES BOARD ET AL. Application to vacate the stay issued by the United States Court of Appeals for the Eighth Circuit, addressed to JUSTICE STEVENS and referred to the Court, denied.

No. D–1742. IN RE DISBARMENT OF GOBLE. Harold W. Goble, of Olympia, Wash., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1743. IN RE DISBARMENT OF HENDERSON. John Walton Henderson, Jr., of Atlanta, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1744. IN RE DISBARMENT OF EBBERT. William Herb Ebbert, of Denver, Colo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1745. IN RE DISBARMENT OF CROCKETT. Kenneth F. Crockett, of Topeka, Kan., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–30. BAKER *v.* CITY OF PHOENIX. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for award of compensation and fees granted, and the Special Master is awarded a total of $1,218 for the period July 1 through September 30, 1996, to be paid equally by the parties. [For earlier order herein, see, *e. g., ante,* p. 803.]

No. 95–897. AUER ET AL. *v.* ROBBINS ET AL. C. A. 8th Cir. [Certiorari granted, 518 U. S. 1016.] Motion of League of California Cities et al. for leave to file a brief as *amici curiae* granted. Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–1441. BLESSING, DIRECTOR, ARIZONA DEPARTMENT OF ECONOMIC SECURITY *v.* FREESTONE ET AL., ON BEHALF OF THEIR MINOR CHILDREN. C. A. 9th Cir. [Certiorari granted, 517 U. S. 1186.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–1478. PRINTZ, SHERIFF/CORONER, RAVALLI COUNTY, MONTANA *v.* UNITED STATES; and

No. 95–1503. MACK, SHERIFF, GRAHAM COUNTY *v.* UNITED STATES. C. A. 9th Cir. [Certiorari granted, 518 U. S. 1003.] Motion of petitioner Richard Mack for divided argument denied.

No. 96–97. CENTRAL REGIONAL SCHOOL DISTRICT *v.* M. C. ET AL., ON BEHALF OF THEIR SON, J. C., *ante,* p. 866. Motion of respondents for award of attorney's fees denied without prejudice to refiling in the United States Court of Appeals for the Third Circuit.

No. 96–124. AMERICAN BROADCASTING COS., INC., ET AL. *v.* BANKATLANTIC FINANCIAL CORP. ET AL., *ante,* p. 867. Motion of respondents for award of attorney's fees denied.

No. 96–6238. NEUTON *v.* CITY NATIONAL BANK (two judgments). Ct. App. Cal., 2d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 9, 1996, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 96–6092. In re Gaunce. C. A. 9th Cir. Petition for writ of common-law certiorari denied. Reported below: 782 F. 2d 1052.

No. 96–5915. In re Danik; and

No. 96–5916. In re Hollingsworth. Petitions for writs of mandamus denied.

Certiorari Denied. (See also No. 96–6092, *supra.*)

No. 95–1975. Howard *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 177.

No. 95–9118. Smallwood *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 907 P. 2d 217.

No. 95–9323. Manning *v.* Missouri. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 916 S. W. 2d 364.

No. 96–40. San Pedro *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 79 F. 3d 1065.

No. 96–66. Autek Systems Corp. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 82 F. 3d 434.

No. 96–201. Conlan *v.* Department of Labor. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 271.

No. 96–337. Austin *v.* Owens-Brockway Glass Container, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 78 F. 3d 875.

No. 96–341. Duncan Aircraft Sales of Florida, Inc. *v.* Cappello et ux., Individually, and Cappello, Administrator of the Estate of Cappello, Deceased. C. A. 6th Cir. Certiorari denied. Reported below: 79 F. 3d 1465.

No. 96–359. Rood et al. *v.* City of Oldsmar. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 682 So. 2d 564.

No. 96–360. Branscum et al. *v.* United States; and

No. 96-361. Hill *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 1307.

No. 96-375. Al-Harbi *v.* Citibank, N. A., et al. C. A. D. C. Cir. Certiorari denied. Reported below: 85 F. 3d 680.

No. 96-376. Willbanks *v.* Keck et al. Ct. App. Ariz. Certiorari denied.

No. 96-385. Stevens *v.* McGinnis, Inc.; and
No. 96-396. McGinnis, Inc. *v.* Stevens. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 1353.

No. 96-394. Pickett *v.* City of Warr Acres et al. Ct. App. Okla. Certiorari denied.

No. 96-404. Romero, Individually and as Legal Representative of the Estate of Romero *v.* Thompson et al. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 1311.

No. 96-408. Lexie, Individually and as Executor of the Estate of Lexie, Deceased *v.* State Farm Mutual Automobile Insurance Co. et al. Sup. Ct. Va. Certiorari denied. Reported below: 251 Va. 390, 469 S. E. 2d 61.

No. 96-412. Ellerbee *v.* Cobb County School Board et al. C. A. 11th Cir. Certiorari denied. Reported below: 82 F. 3d 430.

No. 96-413. Cox *v.* Texas. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 96-422. Turner *v.* Investek Financial Corp. et al. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 96-427. Johnson *v.* Reich, Secretary of Labor. C. A. 5th Cir. Certiorari denied. Reported below: 78 F. 3d 582.

No. 96-443. Coughlin *v.* Baptist Medical Center Princeton et al. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 436.

No. 96-448. In re Asam. Ct. Civ. App. Ala. Certiorari denied. Reported below: 682 So. 2d 516.

No. 96-458. Waite *v.* Hippe et al. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 842.

No. 96–468. Helton et al. *v.* Kmart Corp. C. A. 11th Cir. Certiorari denied. Reported below: 79 F. 3d 1086.

No. 96–478. Asam *v.* Alabama State Bar et al. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 176.

No. 96–520. Smith *v.* Louisiana-Pacific Corp. et al. C. A. 10th Cir. Certiorari denied. Reported below: 89 F. 3d 849.

No. 96–539. Regalbuto et al. *v.* City of Philadelphia et al. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 125.

No. 96–544. Stringfellow, aka Fortini *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 89 F. 3d 851.

No. 96–580. Syverson *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 90 F. 3d 227.

No. 96–5178. Russell *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 670 So. 2d 816.

No. 96–5351. Geary *v.* Levindale Hebrew Geriatric Center and Hospital. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 414.

No. 96–5539. Salemo *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 1453.

No. 96–5857. Simpson *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 172 Ill. 2d 117, 665 N. E. 2d 1228.

No. 96–5862. O'Brien *v.* Bank One Columbus, N. A. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 96–5886. Olguin et al. *v.* Lucero et al. C. A. 10th Cir. Certiorari denied. Reported below: 87 F. 3d 401.

No. 96–5890. Kemp *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 324 Ark. 178, 919 S. W. 2d 943.

No. 96–5896. Schaffer *v.* Kirkland et al. C. A. 3d Cir. Certiorari denied.

No. 96–5897. Lee *v.* Berthelot et al. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 432.

No. 96–5900. Logan *v.* German. C. A. 7th Cir. Certiorari denied.

No. 96–5904. Stover *v.* O'Connell & Associates. C. A. 4th Cir. Certiorari denied. Reported below: 84 F. 3d 132.

No. 96–5906. Sorbet *v.* Workers' Compensation Appeals Board et al. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 96–5908. Jackson *v.* Sowa et al. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 152.

No. 96–5913. Creamer *v.* Laidlaw Transit, Inc. C. A. 10th Cir. Certiorari denied. Reported below: 86 F. 3d 167.

No. 96–5921. Gossage *v.* Barbour, Superintendent, Twin Rivers Correctional Center. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1318.

No. 96–5924. Dixon *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 673 So. 2d 608.

No. 96–5925. Haynes *v.* Jones et al. C. A. 11th Cir. Certiorari denied.

No. 96–5927. Harris *v.* Coughlin, Commissioner, New York State Department of Corrections, et al. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 687.

No. 96–5928. DuBuc *v.* Court of Criminal Appeals of Oklahoma et al. C. A. 10th Cir. Certiorari denied. Reported below: 91 F. 3d 159.

No. 96–5933. Johnson *v.* United States District Court for the Eastern District of California. C. A. 9th Cir. Certiorari denied.

No. 96–5937. Horton *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 675 So. 2d 319.

No. 96–5944. Wesley *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division, et al. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 1312.

No. 96–5960. Stallings *v.* Cain, Warden, et al. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 140.

No. 96–5964. Ochoa *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–5965. Sutton *v.* Kernan, Warden. C. A. 9th Cir. Certiorari denied.

No. 96–5970. Wess *v.* Revell et al. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 139.

No. 96–6013. Tierney *v.* Peterson, Superintendent, Washington Corrections Center. C. A. 9th Cir. Certiorari denied.

No. 96–6056. Hines *v.* Massachusetts (two judgments). Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 423 Mass. 1005, 668 N. E. 2d 323 (first judgment); 423 Mass. 1004, 668 N. E. 2d 324 (second judgment).

No. 96–6071. Nestler *v.* Chater, Commissioner of Social Security. C. A. 3d Cir. Certiorari denied. Reported below: 82 F. 3d 406.

No. 96–6107. Milner *v.* Stainer, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1162.

No. 96–6123. Royster *v.* Office of Personnel Management. C. A. Fed. Cir. Certiorari denied. Reported below: 91 F. 3d 170.

No. 96–6136. Sanchez *v.* Wyoming. 3d Jud. Dist. Ct., Sweetwater County, Wyo. Certiorari denied.

No. 96–6137. Russo *v.* Beyer, Assistant Commissioner, Division of Operations, New Jersey Department of Corrections, et al. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1172.

No. 96–6152. Seagrave *v.* Spindler et al. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 154.

No. 96–6173. Freeman *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 48.

No. 96–6191. Slappy *v.* South Carolina et al. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1181.

No. 96–6196. Aguilar Riley Ozmen *v.* New Mexico. Dist. Ct. N. M., Bernalillo County. Certiorari denied.

No. 96–6201. Kemer *v.* Johnson, Administrator, General Services Administration. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 683.

No. 96–6207. Turner *v.* Merit Systems Protection Board. C. A. Fed. Cir. Certiorari denied. Reported below: 98 F. 3d 1357.

No. 96–6215. Allah *v.* Vaughn, Superintendent, State Correctional Institution at Frackville. C. A. 3d Cir. Certiorari denied.

No. 96–6236. Poindexter *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 86 F. 3d 27.

No. 96–6242. Jackson *v.* Chater, Commissioner of Social Security. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 834.

No. 96–6253. Thomas *v.* United States; and
No. 96–6313. Thomas *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 139.

No. 96–6255. Van Hoorelbeke *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 654.

No. 96–6256. Esquivel *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 88 F. 3d 722.

No. 96–6257. Geffrard *v.* United States; and
No. 96–6263. Landry *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 448.

No. 96–6258. Hicks *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 84 F. 3d 1244.

No. 96–6259. Hunter *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 86 F. 3d 679.

No. 96–6266. Khamvongsa *v.* United States. Ct. App. D. C. Certiorari denied.

No. 96–6275. Garza Cantu *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 436.

No. 96–6276. NGUYEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 88 F. 3d 812.

No. 96–6278. GARCIA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 362.

No. 96–6285. NORDQUEST *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1159.

No. 96–6286. LARTEY-TRAPMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1183.

No. 96–6289. ALONSO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 437.

No. 96–6295. AMES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 155.

No. 96–6297. SALLEE *v.* UNITED STATES PAROLE COMMISSION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 835.

No. 96–6301. ROJAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 100 F. 3d 949.

No. 96–6303. ASKEW *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 88 F. 3d 1065.

No. 96–6304. BARNES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 96–6311. MANDARINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 682.

No. 96–6315. BASTIDAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 126.

No. 96–6319. MOSS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 135.

No. 96–6320. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 84 F. 3d 1154.

No. 96–6322. MATTHEWS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 847.

No. 96–6326. THOMAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 1392.

No. 96–6331. Elliott *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 156.

No. 96–6333. Hermanson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 156.

No. 96–6334. Demeo *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1436.

No. 96–6335. Demonick *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1199.

No. 96–6336. Dorrough *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 84 F. 3d 1309.

No. 96–6337. Harkrider *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 88 F. 3d 1408.

No. 96–6338. Fitzgerald *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 89 F. 3d 218.

No. 96–6353. Murray *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1199.

No. 96–98. Kmart Corp. *v.* Helton et al. C. A. 11th Cir. Motion of Equal Employment Advisory Council et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 79 F. 3d 1086.

No. 96–517. Fry et al. *v.* UAL Corp. C. A. 7th Cir. Motions of Harvey L. Harris and Securities Victims of America for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 84 F. 3d 936.

No. 96–543. Rehman *v.* Garwood, McKenna & McKenna, P. A., et al. Sup. Ct. Fla. Petition for writ of certiorari and writ of prohibition denied.

Rehearing Denied

No. 95–9002. Long *v.* Sparkman, Warden, et al., *ante,* p. 833;
No. 95–9110. Kinnell et ux. *v.* Convenient Loan Co. et al., *ante,* p. 838;
No. 95–9188. Long *v.* Sparkman, Warden, *ante,* p. 842;
No. 95–9228. Bowman *v.* Bowling, *ante,* p. 844;

No. 96–212. IN RE SMITH, *ante,* p. 871;

No. 96–5509. TIERNEY *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL., *ante,* p. 901; and

No. 96–5541. SAVAGE *v.* DISTRICT OF COLUMBIA, *ante,* p. 902. Petitions for rehearing denied.

NOVEMBER 13, 1996

Certiorari Denied

No. 96–6695 (A–350). LONCHAR *v.* TURPIN, WARDEN, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 101 F. 3d 95.

No. 96–6696 (A–349). LONCHAR *v.* GEORGIA BOARD OF PARDONS AND PAROLES ET AL. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. The order heretofore entered by JUSTICE KENNEDY is vacated.

Rehearing Denied

No. 96–5063 (A–339). MIDDLETON *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL., *ante,* p. 876. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Petition for rehearing denied.

NOVEMBER 14, 1996

Miscellaneous Orders

No. A–357 (96–6715). FELKER *v.* TURPIN, WARDEN. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the sending down of the judgment of this Court.

No. 96–6698. IN RE LONCHAR. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 96–6699. LONCHAR *v.* GEORGIA BOARD OF PARDONS AND PAROLES ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–6697 (A–351). FELKER *v.* TURPIN, WARDEN, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 101 F. 3d 95.

NOVEMBER 15, 1996

Miscellaneous Order

No. 96–6716 (A–358). IN RE FELKER. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Granted

No. 96–203. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, December 30, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 29, 1997. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 14, 1997. This Court's Rule 29.2 does not apply. Reported below: 82 F. 3d 429.

Certiorari Denied

No. 96–6715 (A–357). FELKER *v.* TURPIN, WARDEN. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

No. 96–6717 (A–359). FELKER *v.* TURPIN, WARDEN. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 101 F. 3d 657.

NOVEMBER 18, 1996

Certiorari Granted—Vacated and Remanded

No. 95–1948. UNITED STATES *v.* PEREZ. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Ursery,* 518 U. S. 267 (1996). Reported below: 70 F. 3d 345.

No. 96–5337. MEZA *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Koon* v. *United States,* 518 U. S. 81 (1996). Reported below: 76 F. 3d 117.

No. 96–5586. MILLS *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Ornelas* v. *United States,* 517 U. S. 690 (1996). Reported below: 78 F. 3d 1190.

Miscellaneous Orders

No. D–1700. IN RE DISBARMENT OF HENRY. Disbarment entered. [For earlier order herein, see 518 U. S. 1037.]

No. D–1712. IN RE DISBARMENT OF HATCHER. Disbarment entered. [For earlier order herein, see 518 U. S. 1044.]

No. D–1724. IN RE DISBARMENT OF PARKS. Disbarment entered. [For earlier order herein, see 518 U. S. 1052.]

No. D–1746. IN RE DISBARMENT OF BRADY. Michael J. Brady, of Tucson, Ariz., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1747. IN RE DISBARMENT OF POLISCHUK. Gregory J. Polischuk, of Springfield, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1748. IN RE DISBARMENT OF D'AMBROSIO. Vincent T. D'Ambrosio, of Brooklyn, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–31. WALLER *v.* PERRY, SECRETARY OF DEFENSE. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. M–32. BILLY-EKO *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 95–2031. YOUNG ET AL. *v.* FORDICE ET AL. D. C. S. D. Miss. [Probable jurisdiction noted, 518 U. S. 1055.] Motion of appellees Kirk Fordice et al. to exclude the United States as a party in the case granted without prejudice to the Acting Solicitor General filing a brief as *amicus curiae* for the United States.

No. 96–370. BAY AREA LAUNDRY AND DRY CLEANING PENSION TRUST FUND *v.* FERBAR CORPORATION OF CALIFORNIA, INC., ET AL. C. A. 9th Cir. Motions of National Coordinating Committee for Multiemployer Plans and Central States, Southeast and Southwest Areas Pension Fund for leave to file briefs as *amici curiae* granted. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 96–437. CHRISTIANS, TRUSTEE *v.* CRYSTAL EVANGELICAL FREE CHURCH. C. A. 9th Cir. Motion of Minnesota Civil Liberties Union for leave to file a brief as *amicus curiae* granted.

Certiorari Denied

No. 95–8942. SHOEMAKER *v.* CALIFORNIA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 108.

No. 95–9302. MCCARTHY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 77 F. 3d 522.

No. 96–90. REGENTS OF THE UNIVERSITY OF CALIFORNIA *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 82 F. 3d 291.

No. 96–234. STURM, RUGER & CO., INC. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 84 F. 3d 1.

No. 96–252. DCX, Inc. *v.* Perry, Secretary of Defense. C. A. Fed. Cir. Certiorari denied. Reported below: 79 F. 3d 132.

No. 96–279. Stonehill et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 1156.

No. 96–364. Highland Irrigation Co. et al. *v.* Colorado ex rel. Simpson, State Engineer, et al. Sup. Ct. Colo. Certiorari denied. Reported below: 917 P. 2d 1242.

No. 96–373. Brooks et al. *v.* Pataki, Governor of New York, et al. C. A. 2d Cir. Certiorari denied. Reported below: 84 F. 3d 1454.

No. 96–377. Braun, Individually and as Administrator of the Estate of Braun, Deceased *v.* Lorillard, Inc., et al. C. A. 7th Cir. Certiorari denied. Reported below: 84 F. 3d 230.

No. 96–379. King, Individually and on Behalf of All Others Similarly Situated *v.* American Civil Liberties Union of Mississippi, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 784.

No. 96–381. New York State Thruway Authority *v.* Mancuso et ux., Individually and on Behalf of Their Children Deanna and Theresa, et al. C. A. 2d Cir. Certiorari denied. Reported below: 86 F. 3d 289.

No. 96–382. Powers, Next Friend of Powers, a Minor, et al. *v.* Bayliner Marine Corp. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 789.

No. 96–386. Haberbush *v.* Clark Oil Trading Co. et al. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 846.

No. 96–387. Dodaro et al. *v.* Christy. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 122.

No. 96–391. Dailey *v.* LTV Aerospace & Defense Co. et al. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 415.

No. 96–399. Flanagan *v.* Cazalet et al. Ct. App. Ky. Certiorari denied.

No. 96–400. Paulsen *v.* Beyond, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 140.

No. 96–414. Independent Charities of America, Inc., et al. *v.* Minnesota et al. C. A. 8th Cir. Certiorari denied. Reported below: 82 F. 3d 791.

No. 96–417. North Dakota Association of Retarded Citizens *v.* Schafer, Governor of North Dakota, et al. C. A. 8th Cir. Certiorari denied. Reported below: 83 F. 3d 1008.

No. 96–418. Office and Professional Employees International Union, AFL–CIO, CLC *v.* Pope. C. A. 6th Cir. Certiorari denied. Reported below: 74 F. 3d 1492.

No. 96–419. Brock, Individually and as Guardian ad Litem for Hardy, a Minor *v.* Lewis et al. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1148.

No. 96–420. Hughey *v.* JMS Development Corp. C. A. 11th Cir. Certiorari denied. Reported below: 78 F. 3d 1523.

No. 96–425. Loew et al. *v.* Hibbard et al. Sup. Ct. Colo. Certiorari denied. Reported below: 918 P. 2d 212.

No. 96–432. Sanders et al. *v.* Venture Stores, Inc. C. A. 7th Cir. Certiorari denied. Reported below: 82 F. 3d 420.

No. 96–435. Kramer *v.* Vision Cable of Pinellas, Inc. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 674 So. 2d 134.

No. 96–440. Bergstrom et al. *v.* Dalkon Shield Claimants Trust. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 364.

No. 96–450. Gillen *v.* City of Boston. C. A. 1st Cir. Certiorari denied.

No. 96–476. Sheppard *v.* Riverview Nursing Centre, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 88 F. 3d 1332.

No. 96–484. Cheek *v.* American Airlines, Inc. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 838.

No. 96–522. Harris *v.* City of Hamtramck et al. Ct. App. Mich. Certiorari denied.

No. 96–555. Rehman *v.* ECC International Corp. et al. Sup. Ct. Fla. Certiorari denied. Reported below: 680 So. 2d 424.

No. 96–557. Anjelica Nurseries, Inc., et al. *v.* Corado-Ceron. Ct. Sp. App. Md. Certiorari denied. Reported below: 107 Md. App. 735.

No. 96–571. Smith *v.* Mail-Well Envelope Co. et al. C. A. 10th Cir. Certiorari denied. Reported below: 90 F. 3d 433.

No. 96–600. LaPointe *v.* Connecticut. Sup. Ct. Conn. Certiorari denied. Reported below: 237 Conn. 694, 678 A. 2d 942.

No. 96–614. Froeman *v.* Glendening, Governor of Maryland, et al. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1178.

No. 96–615. Miller *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 91 F. 3d 145.

No. 96–621. Muracciole *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1169.

No. 96–630. Pierson *v.* Wilshire Terrace Corp. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–634. Jackson et al. *v.* Chemical Leaman Tank Lines, Inc. C. A. 3d Cir. Certiorari denied. Reported below: 89 F. 3d 976.

No. 96–636. Shrock *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 92 F. 3d 1187.

No. 96–5025. Kinser *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 413.

No. 96–5242. Hamilton *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 619.

No. 96–5272. Taylor *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 672 So. 2d 1246.

No. 96–5556. Dunlap et al. *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 78 F. 3d 1190.

No. 96–5602. Wesley *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1749.

No. 96–5603. Everhart *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1715.

No. 96–5604. Grasmick *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1719.

No. 96–5605. Fisher *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1716.

No. 96–5616. Bell *v.* City of Hallandale, Florida, et al. C. A. 11th Cir. Certiorari denied.

No. 96–5636. Baird et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 85 F. 3d 450.

No. 96–5638. Shoemaker *v.* Carlos et al. C. A. 5th Cir. Certiorari denied.

No. 96–5653. Faulder *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 515.

No. 96–5681. Bonta *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1707.

No. 96–5848. Land *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1726.

No. 96–5851. Bonty *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1707.

No. 96–5859. Williams *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1750.

No. 96–5860. Wood *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1751.

No. 96–5876. Gauthier *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1718.

No. 96–5877. Garrett *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1718.

No. 96–5878. Harpster *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1721.

No. 96–5950. Jones *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1724.

No. 96–5977. Harrison *v.* Thompson, Warden. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 1331.

No. 96–5978. Fort *v.* Hailey et al. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1318.

No. 96–5979. Davis *v.* Sacramento County District Attorney's Office. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 385.

No. 96–5984. Harvey *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 675 So. 2d 932.

No. 96–5985. Blandino *v.* Lindler et al. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 591.

No. 96–5986. Vrba *v.* Wakatsuki et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–5988. Muhummad *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 96–5989. Ivy *v.* Bowersox, Superintendent, Potosi Correctional Center, et al. C. A. 8th Cir. Certiorari denied.

No. 96–5990. Kelly *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 96–6002. Gallegos *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 185 Ariz. 340, 916 P. 2d 1056.

No. 96–6026. Neal *v.* Regan et al. C. A. 7th Cir. Certiorari denied.

No. 96–6027. Johnson *v.* Hill, Warden. C. A. 9th Cir. Certiorari denied.

No. 96–6035. Woods *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 1312.

No. 96–6037. Turner *v.* Internal Revenue Service et al. C. A. D. C. Cir. Certiorari denied.

No. 96–6038. Turner *v.* Kuykendall. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 134.

No. 96–6039. Dickeson *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1712.

No. 96–6040. WALKER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1749.

No. 96–6041. JESSOP *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1724.

No. 96–6042. MACALINO *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1729.

No. 96–6043. MONCRIEF *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1733.

No. 96–6048. RIVAS LINARES *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 266 Ga. 812, 471 S. E. 2d 208.

No. 96–6049. LINDSEY *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 150.

No. 96–6055. GALLOWAY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 96–6060. SAM *v.* INDEPENDENCE SAVINGS BANK. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 125.

No. 96–6063. WUORNOS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 676 So. 2d 972.

No. 96–6069. WILLIAMS *v.* MCCAUSLAND ET AL. C. A. 2d Cir. Certiorari denied.

No. 96–6079. BLAGG *v.* OREGON ET AL. Ct. App. Ore. Certiorari denied. Reported below: 139 Ore. App. 92, 911 P. 2d 942.

No. 96–6083. ROBINSON *v.* COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY. Sup. Ct. Ohio. Certiorari denied. Reported below: 75 Ohio St. 3d 431, 662 N. E. 2d 798.

No. 96–6087. SIERRA *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1742.

No. 96–6089. OLSEN *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–6226. BERKLEY *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 79 F. 3d 1166.

No. 96–6241. JOYNER *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 96–6260. GARCIA *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 678 So. 2d 1292.

No. 96–6265. MARINOFF *v.* APPELLATE DIVISION, SUPREME COURT OF NEW YORK, FIRST JUDICIAL DEPARTMENT, ET AL. C. A. 2d Cir. Certiorari denied.

No. 96–6279. DAVID *v.* APFEL, LEVY, ZLOTNICK & CO. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 684.

No. 96–6288. WILLIAMS *v.* JONES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 96–6296. WILLIAMS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 252 Va. 3, 472 S. E. 2d 50.

No. 96–6308. ROTA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1174.

No. 96–6309. LASITER *v.* THOMAS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 89 F. 3d 699.

No. 96–6310. LEE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 135.

No. 96–6316. BOLDEN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 96–6323. PAVLICO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 85 F. 3d 616.

No. 96–6324. PARRADO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 99 F. 3d 402.

No. 96–6327. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1253 and 1254.

No. 96–6341. REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 51.

No. 96–6343. RAHMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 89.

No. 96–6357. MCCLENDON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 91 F. 3d 160.

No. 96–6359. RUX *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 84 F. 3d 912.

No. 96–6361. NUNEZ-ELIZARRARAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 390.

No. 96–6362. CATON-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 155.

No. 96–6365. ROGERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 1326.

No. 96–6366. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 50.

No. 96–6367. SALEMO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 127.

No. 96–6369. KYLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 156.

No. 96–6376. FREEMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1199.

No. 96–6377. HEBEKA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 279.

No. 96–6379. FORD ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 88 F. 3d 1350.

No. 96–6380. EVANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 174.

No. 96–6382. FRIAS-CASTRO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 78 F. 3d 586.

No. 96–6388. EVANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1183.

No. 96–6395. BERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 90 F. 3d 148.

No. 96–6396. SANTIAGO-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 99 F. 3d 1136.

No. 96–6397. OSBORNE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 51.

No. 96–6398. Riazco *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 752.

No. 96–6401. Taylor *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 78 F. 3d 599.

No. 96–6407. Lundy *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 94 F. 3d 645.

No. 96–6408. Irizarry-Sanabria *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 94 F. 3d 640.

No. 96–6411. Proctor *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 82 F. 3d 411.

No. 96–6414. Lewis *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 51.

No. 96–6420. Eastland *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 1148.

No. 96–6422. Harrison *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1183.

No. 96–6423. Hart *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 663.

No. 96–6428. Bisaccia *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 85 F. 3d 9.

No. 96–6429. Dolfi *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1173.

No. 96–6432. Johnson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 624.

No. 96–6433. Wills *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 88 F. 3d 704.

No. 96–6437. Rickett *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 89 F. 3d 224.

No. 96–6447. Watkins *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 91 F. 3d 163.

No. 96–6449. Jaramillo *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 98 F. 3d 521.

No. 96–6455. BARNES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1163.

No. 96–6474. GIANFORTUNA *v.* JABE, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 96–355. CALDERON, WARDEN *v.* ANGELO MORALES. C. A. 9th Cir. Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 85 F. 3d 1387.

Rehearing Denied

No. 95–1895. ASAM *v.* DISCIPLINARY BOARD OF THE ALABAMA STATE BAR, *ante,* p. 814;

No. 95–2076. FERNANDES *v.* ROCKAWAY TOWNSHIP TOWN COUNCIL ET AL., *ante,* p. 824;

No. 95–9006. CARROLL *v.* LOCAL 144 PENSION FUND ET AL., *ante,* p. 834;

No. 95–9129. KEY *v.* CLARKE ET AL., *ante,* p. 839;

No. 95–9180. IN RE EVERETT, *ante,* p. 806;

No. 95–9218. WHITING *v.* UTAH, *ante,* p. 844;

No. 95–9229. BREWER *v.* PUCKETT, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL., *ante,* p. 844;

No. 95–9297. REYNOLDS *v.* TELE-COMMUNICATIONS, INC., *ante,* p. 849;

No. 95–9408. COOPER *v.* MALONE ET AL., *ante,* p. 855;

No. 96–60. IN RE RATCLIFF, *ante,* p. 806;

No. 96–89. UNITED STATES EX REL. HAGOOD *v.* SONOMA COUNTY WATER AGENCY, *ante,* p. 865;

No. 96–283. DEE *v.* RENO, ATTORNEY GENERAL, ET AL., *ante,* p. 873;

No. 96–5074. CLAY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante,* p. 877;

No. 96–5159. FIELDS *v.* AMERICAN EXPRESS CO., *ante,* p. 882;

No. 96–5311. BANKSTON ET AL. *v.* SOUTHERN FARM BUREAU CASUALTY INSURANCE CO. ET AL. (two judgments), *ante,* p. 891;

No. 96–5358. CEBALLOS *v.* UNITED STATES, *ante,* p. 893;

No. 96–5432. KONTAKIS *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL., *ante,* p. 898; and

No. 96–5934. LUCAS *v.* UNITED STATES, *ante*, p. 941. Petitions for rehearing denied.

NOVEMBER 21, 1996

Dismissal Under Rule 46

No. 96–465. COLEMAN, SHAW, WILLOUS GROUP, INC., ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, CONSERVATOR FOR HOLLYWOOD FEDERAL SAVINGS BANK. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 91 F. 3d 161.

Certiorari Denied

No. 96–6724 (A–360). BENNETT *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 92 F. 3d 1336.

NOVEMBER 27, 1996

Certiorari Granted

No. 96–272. METROPOLITAN STEVEDORE CO. *v.* RAMBO ET AL. C. A. 9th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, January 13, 1997. Briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, February 12, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 3, 1997. This Court's Rule 29.2 does not apply. Reported below: 81 F. 3d 840.

No. 96–318. RICHARDSON ET AL. *v.* MCKNIGHT. C. A. 6th Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, January 13, 1997. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, February 12, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 3, 1997. This Court's Rule 29.2 does not apply. Reported below: 88 F. 3d 417.

No. 96–491. INTER-MODAL RAIL EMPLOYEES ASSN. ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY CO. ET AL. C. A. 9th Cir. Certiorari granted limited to Question 3 presented by the petition. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, January 13, 1997. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, February 12, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, March 3, 1997. This Court's Rule 29.2 does not apply. Reported below: 80 F. 3d 348.

DECEMBER 2, 1996

Affirmed on Appeal

No. 96–471. MILLER ET AL. *v.* OHIO ET AL. Affirmed on appeal from D. C. S. D. Ohio.

Certiorari Granted—Reversed and Remanded. (See No. 95–2082, *ante,* p. 54.)

Certiorari Dismissed

No. 96–6126. RICHARDS *v.* UNITED STATES. C. A. 10th Cir. Certiorari dismissed. Reported below: 87 F. 3d 1152.

Miscellaneous Orders. (See also No. 96–5831, *ante,* p. 59.)

No. A–1063 (O. T. 1995). OWENS *v.* UNITED STATES. Application for bail pending appeal, addressed to JUSTICE SOUTER and referred to the Court, denied.

No. D–1714. IN RE DISBARMENT OF SCHOOR. Disbarment entered. [For earlier order herein, see 518 U. S. 1045.]

No. D–1719. IN RE DISBARMENT OF GOLKIN. Disbarment entered. [For earlier order herein, see 518 U. S. 1049.]

No. D–1722. IN RE DISBARMENT OF CUNNINGHAM. Disbarment entered. [For earlier order herein, see 518 U. S. 1052.]

No. D–1725. IN RE DISBARMENT OF HUGHES. Disbarment entered. [For earlier order herein, see 518 U. S. 1053.]

No. D–1726. In re Disbarment of Caron. Disbarment entered. [For earlier order herein, see 518 U. S. 1053.]

No. D–1727. In re Disbarment of Adams. Disbarment entered. [For earlier order herein, see 518 U. S. 1053.]

No. D–1728. In re Disbarment of Mestman. Disbarment entered. [For earlier order herein, see 518 U. S. 1053.]

No. D–1749. In re Disbarment of Keathley. Ernest L. Keathley, Jr., of Florissant, Mo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1750. In re Disbarment of Jacobs. Kent Francis Jacobs, of Seward, Neb., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1751. In re Disbarment of Principato. Saverio R. Principato, of Camden, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1752. In re Disbarment of Frieze. Jack Wendell Frieze, of Irving, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1753. In re Disbarment of Barone. Anthony F. Barone, of Palm Beach, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1754. In re Disbarment of Nedell. Jay Stuart Nedell, of Houston, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1755. In re Disbarment of Smotkin. Alan Melvyn Smotkin, of Beverly Hills, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1756. In re Disbarment of Allen. Robin W. Allen, of Sacramento, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–33. Marcus *v.* Carrasquillo et al. Motion of petitioner to waive requirements of this Court's Rule 33.1 denied.

No. M–34. McMeans *v.* Leonard et al. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 105, Orig. Kansas *v.* Colorado. Motion of the Special Master for interim fees and expenses granted, and the Special Master is awarded $107,199.16 for the period November 2, 1995, through October 18, 1996, to be paid equally by Kansas and Colorado. [For earlier order herein, see, *e. g.*, 516 U. S. 1025.]

No. 96–323. K. R., an Infant, by Her Parents and Next Friends, et al. *v.* Anderson Community School Corp. C. A. 7th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 96–5658. Lambrix *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. [Certiorari granted, *ante*, p. 958.] Motion for appointment of counsel granted, and it is ordered that Matthew C. Lawry, Esq., of Philadelphia, Pa., be appointed to serve as counsel for petitioner in this case.

No. 96–6240. Lee *v.* Fuji Bank, Ltd. C. A. 1st Cir.; and
No. 96–6244. McKinney *v.* Washington. Ct. App. Wash. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 23, 1996, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 96–6135. In re Stiles; and
No. 96–6189. In re Gaydos. Petitions for writs of mandamus denied.

No. 96–6213. In re Banks; and
No. 96–6478. In re Lynn et al. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Denied

No. 95–1780. Nebraska *v.* Reeder. Sup. Ct. Neb. Certiorari denied. Reported below: 249 Neb. 207, 543 N. W. 2d 429.

No. 95–1951. Johnson *v.* Sheahan et al. C. A. 7th Cir. Certiorari denied. Reported below: 69 F. 3d 144.

No. 95–1994. Macias-Munoz *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 74 F. 3d 545.

No. 95–2062. Multnomah County et al. *v.* Pierce. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 1032.

No. 95–9363. LaFave *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 96–61. Novak *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 96–141. Hatch *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 82 F. 3d 1370.

No. 96–167. City of Chicago *v.* Evans et al. C. A. 7th Cir. Certiorari denied. Reported below: 81 F. 3d 658.

No. 96–288. DiDomenico et al. *v.* United States; and
No. 96–294. Marino *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 78 F. 3d 294.

No. 96–296. C & D Charter Power Systems, Inc. *v.* National Labor Relations Board. C. A. D. C. Cir. Certiorari denied. Reported below: 88 F. 3d 1278.

No. 96–298. Sosa et al. *v.* Alvarez-Machain. C. A. 9th Cir. Certiorari denied.

No. 96–306. Metropolitan Life Insurance Co. *v.* Robertson-Ceco Corp.; and

No. 96–472. ROBERTSON-CECO CORP. *v.* METROPOLITAN LIFE INSURANCE CO. C. A. 2d Cir. Certiorari denied. Reported below: 84 F. 3d 560.

No. 96–322. NACHREINER BOIE ART FACTORY ET AL. *v.* GORIS ET AL. Ct. App. Wis. Certiorari denied. Reported below: 201 Wis. 2d 549, 549 N. W. 2d 273.

No. 96–367. WHITE *v.* RUSH HEALTH SYSTEMS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 626.

No. 96–426. LO DUCA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 93 F. 3d 1100.

No. 96–433. CITY OF EVERGREEN ET AL. *v.* STALLWORTH. Sup. Ct. Ala. Certiorari denied. Reported below: 680 So. 2d 229.

No. 96–434. MCI TELECOMMUNICATIONS CORP. *v.* UNITED ARAB EMIRATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 82 F. 3d 658.

No. 96–436. WEISS *v.* WEISS. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 42 Cal. App. 4th 106, 49 Cal. Rptr. 2d 339.

No. 96–451. NORTH MICHIGAN LAND & OIL CORP. ET AL. *v.* MICHIGAN PUBLIC SERVICE COMMISSION ET AL. Ct. App. Mich. Certiorari denied. Reported below: 211 Mich. App. 424, 536 N. W. 2d 259.

No. 96–452. PITRE ET AL. *v.* LOUISIANA TECH UNIVERSITY ET AL. Sup. Ct. La. Certiorari denied. Reported below: 673 So. 2d 585.

No. 96–455. DEJESUS ET AL. *v.* SEARS, ROEBUCK & CO., INC. C. A. 2d Cir. Certiorari denied. Reported below: 87 F. 3d 65.

No. 96–456. HEALY *v.* FAIRLEIGH DICKINSON UNIVERSITY ET AL. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 287 N. J. Super. 407, 671 A. 2d 182.

No. 96–460. LIQUIDATION ESTATE OF DE LAURENTIIS ENTERTAINMENT GROUP *v.* TECHNICOLOR, INC. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1061.

No. 96–462. KGET–TV Channel 17 et al. *v.* Superior Court of California, County of Kern (California et al., Real Parties in Interest). Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 96–463. Smith et al. *v.* Houston Oilers, Inc., dba The Houston Oilers, et al. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 717.

No. 96–464. Cline *v.* Rogers, Individually and in His Capacity as Sheriff of McMinn County, et al. C. A. 6th Cir. Certiorari denied. Reported below: 87 F. 3d 176.

No. 96–467. Jones et al. *v.* General Electric Co. C. A. 7th Cir. Certiorari denied. Reported below: 87 F. 3d 209.

No. 96–475. Lal *v.* Borough of Kennett Square. Commw. Ct. Pa. Certiorari denied. Reported below: 665 A. 2d 15.

No. 96–477. Farquhar et al. *v.* City of Manhattan Beach et al. Sup. Ct. Cal. Certiorari denied. Reported below: 13 Cal. 4th 232, 914 P. 2d 160.

No. 96–481. Oswald et ux. *v.* Louisiana Department of Transportation and Development. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 665 So. 2d 668.

No. 96–485. Long Island Jewish Medical Center *v.* Schonholz. C. A. 2d Cir. Certiorari denied. Reported below: 87 F. 3d 72.

No. 96–487. K. D. H. *v.* K. M. Ct. Civ. App. Ala. Certiorari denied. Reported below: 678 So. 2d 1084.

No. 96–488. Jamell, an Infant, by His Mother and Next Friend, Jamell, et al. *v.* City of Chesapeake. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 828.

No. 96–493. Anderson *v.* Envirotest Technologies, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 438.

No. 96–494. Ertel *v.* Patriot-News Co. et al. Sup. Ct. Pa. Certiorari denied. Reported below: 544 Pa. 93, 674 A. 2d 1038.

No. 96–495. Doe et al. *v.* Lockwood et al. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 833.

No. 96–496. Walton *v.* Throgmorton. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 96–499. CSX Transportation, Inc. *v.* Adams et al. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 671 So. 2d 540.

No. 96–500. Wilson *v.* Began et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–501. Anderson *v.* Mississippi et al. Sup. Ct. Miss. Certiorari denied.

No. 96–502. Brown *v.* Virginia. Ct. App. Va. Certiorari denied.

No. 96–503. Teets *v.* Chromalloy Gas Turbine Corp. C. A. Fed. Cir. Certiorari denied. Reported below: 83 F. 3d 403.

No. 96–507. Graham *v.* Niagara Mohawk Power Corp. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 221 App. Div. 2d 1033, 635 N. Y. S. 2d 405.

No. 96–508. Plassman et ux. *v.* City of Wauseon et al. C. A. 6th Cir. Certiorari denied. Reported below: 85 F. 3d 629.

No. 96–509. Pringle *v.* Wolfe, Town Justice of Walworth, et al. Ct. App. N. Y. Certiorari denied. Reported below: 88 N. Y. 2d 426, 668 N. E. 2d 1376.

No. 96–510. Bland et al. *v.* Fessler et al. C. A. 9th Cir. Certiorari denied. Reported below: 88 F. 3d 729.

No. 96–512. Scypta *v.* Oglebay Norton Co. et al. C. A. 6th Cir. Certiorari denied. Reported below: 91 F. 3d 144.

No. 96–513. V–1 Oil Co. *v.* Idaho Petroleum Clean Water Trust Fund. Sup. Ct. Idaho. Certiorari denied. Reported below: 128 Idaho 890, 920 P. 2d 909.

No. 96–514. Yawczak *v.* Acosta et ux. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 1143.

No. 96–521. One World One Family Now et al. *v.* City and County of Honolulu et al. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 1009.

No. 96–523. Salinas *v.* University of Texas-Pan American et al. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 1312.

No. 96–524. Yohn *v.* Board of Regents, University of Michigan, et al. Ct. App. Mich. Certiorari denied.

No. 96–527. Power *v.* Alexandria Physicians Group, Ltd., et al. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 132.

No. 96–528. Smith *v.* City and County of Denver et al. C. A. 10th Cir. Certiorari denied. Reported below: 89 F. 3d 849.

No. 96–533. Brown *v.* Sanford, Individually and dba Tommie Ray's. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 48.

No. 96–535. Schley *v.* College of Charleston et al. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 416.

No. 96–537. Hervey et al., Parents and Natural Guardians of Hervey, Deceased *v.* Shalala, Secretary of Health and Human Services. C. A. Fed. Cir. Certiorari denied. Reported below: 88 F. 3d 1001.

No. 96–549. Tovar *v.* IBP, Inc. C. A. 10th Cir. Certiorari denied. Reported below: 86 F. 3d 1167.

No. 96–551. G•UB•MK Constructors *v.* Reich, Secretary of Labor. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 175.

No. 96–558. Copy-Mor, Inc., et al. *v.* California Pacific Medical Center. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 150.

No. 96–564. Hall *v.* American National Red Cross. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 919.

No. 96–573. Florida League of Professional Lobbyists, Inc. *v.* Meggs, State Attorney for the Second Judicial Circuit of Florida. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 457.

No. 96–581. Overmyer et ux. *v.* Meeker, Executor of the Estate of Meeker, Deceased, et al. Ct. App. Ind. Certiorari denied. Reported below: 661 N. E. 2d 1271.

No. 96–587. Haley *v.* Ohio. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 96–589. Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Indian Reservation et al. *v.* United States et al. C. A. 9th Cir. Certiorari denied. Reported below: 90 F. 3d 351.

No. 96–596. Cisneros *v.* Reno, Attorney General. C. A. 2d Cir. Certiorari denied.

No. 96–607. Kramer *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 73 F. 3d 1067.

No. 96–641. New Jersey *v.* Womack. Sup. Ct. N. J. Certiorari denied. Reported below: 145 N. J. 576, 679 A. 2d 606.

No. 96–646. Schnuck Markets, Inc. *v.* Luecke. C. A. 8th Cir. Certiorari denied. Reported below: 85 F. 3d 356.

No. 96–649. Wilson *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 44 M. J. 223.

No. 96–658. Simon *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 85 F. 3d 906.

No. 96–677. Cutler *v.* United States;
No. 96–6494. DeJesus *v.* United States; and
No. 96–6522. Balter *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 427.

No. 96–682. Ehrlander *v.* Department of Transportation of Alaska et al. Sup. Ct. Alaska. Certiorari denied.

No. 96–688. Hao Hoang Ho *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 79 F. 3d 1145.

No. 96–699. Rodriguez *v.* Illinois. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 276 Ill. App. 3d 1125, 697 N. E. 2d 17.

No. 96–5234. White *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 81 F. 3d 775.

No. 96–5259. Walker *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 671 So. 2d 581.

No. 96–5306. Habiger *v.* City of Fargo et al. C. A. 8th Cir. Certiorari denied. Reported below: 80 F. 3d 289.

No. 96–5308. Davis *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 82 F. 3d 411.

No. 96–5380. Kenney *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 36 F. 3d 1190 and 105 F. 3d 1.

No. 96–5498. Spence *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division; and
No. 96–5499. Spence *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 80 F. 3d 989.

No. 96–5714. Homick *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 304, 913 P. 2d 1280.

No. 96–5729. Jenkin, aka Jennings, aka Ramirez *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 89 F. 3d 851.

No. 96–5731. Lagoye *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 96–5733. Flores *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 96–5789. Kubinski et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 135.

No. 96–5882. Pararas-Carayannis *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1324.

No. 96–5947. Buenoano *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1078.

No. 96–6082. Saleem *v.* Helman et al. C. A. 7th Cir. Certiorari denied.

No. 96–6085. Shabazz *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 96–6088. Sherrills *v.* Rogers, Warden. C. A. 6th Cir. Certiorari denied.

No. 96–6090. Partee *v.* Pastrick et al. C. A. 7th Cir. Certiorari denied.

No. 96–6094. Ford *v.* Washington, Director, Illinois Department of Corrections. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 838.

No. 96–6095. Harris *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 96–6096. Duchene *v.* Plunkett et al. C. A. 8th Cir. Certiorari denied. Reported below: 78 F. 3d 588.

No. 96–6108. Tucker *v.* Department of Education et al. C. A. D. C. Cir. Certiorari denied.

No. 96–6112. Cook *v.* Arizona. Super. Ct. Ariz., Mohave County. Certiorari denied.

No. 96–6115. McAdams *v.* Automotive Rentals, Inc. Sup. Ct. Ark. Certiorari denied. Reported below: 324 Ark. 332, 924 S. W. 2d 464.

No. 96–6125. Bernstein *v.* National Transportation Safety Board et al. C. A. D. C. Cir. Certiorari denied. Reported below: 90 F. 3d 591.

No. 96–6129. Yuan Jin *v.* Temple University et al. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1171.

No. 96–6139. Burke *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 129, 469 S. E. 2d 901.

No. 96–6142. Wilkerson *v.* Smith et al. C. A. 9th Cir. Certiorari denied.

No. 96–6143. Rhines *v.* South Dakota. Sup. Ct. S. D. Certiorari denied. Reported below: 548 N. W. 2d 415.

No. 96–6153. Shores *v.* Rhoades et al. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1181.

No. 96–6160. Words *v.* Sherwood Medical Co. et al. C. A. 8th Cir. Certiorari denied.

No. 96–6162. Brown *v.* Gross et al. C. A. 10th Cir. Certiorari denied. Reported below: 85 F. 3d 640.

No. 96–6163. Maddox *v.* Walker et al. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1151.

No. 96–6165. Pizzo *v.* Jefferson Parish Sheriff's Office et al. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 50.

No. 96–6168. Montue *v.* Gomez, Director, California Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 153.

No. 96–6169. Loss *v.* Michigan Parole Board. Ct. App. Mich. Certiorari denied.

No. 96–6170. Jackson *v.* Maine Department of Human Services. Sup. Jud. Ct. Me. Certiorari denied.

No. 96–6172. Jones *v.* Maryvale Samaritan Hospital. Ct. App. Ariz. Certiorari denied.

No. 96–6175. Turner *v.* Perry. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 51.

No. 96–6177. Grismore *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 44.

No. 96–6180. Ferguson *v.* Delaware. Sup. Ct. Del. Certiorari denied. Reported below: 676 A. 2d 902.

No. 96–6185. Hughes *v.* Ignacio, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 427.

No. 96–6190. Slappy *v.* Vanmeter et al. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1181.

No. 96–6192. Knapp *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 96–6193. Buc-Hanan *v.* Nishi/Hompa Hongwaji Temple. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–6197. Boblett *v.* Terry et al. Sup. Ct. Va. Certiorari denied.

No. 96–6199. Brown *v.* Contributory Retirement Appeal Board et al. App. Ct. Mass. Certiorari denied. Reported below: 40 Mass. App. 1127, 665 N. E. 2d 1040.

No. 96–6204. Oriakhi *v.* Baltimore City Jail et al. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1151.

No. 96–6211. Spencer *v.* LeMay et al. C. A. 8th Cir. Certiorari denied.

No. 96–6214. Anthony *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 96–6216. Litzenberg *v.* Maryland et al. Ct. App. Md. Certiorari denied.

No. 96–6217. Barnes *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–6218. Blake *v.* Artuz, Superintendent, Green Haven Correctional Facility. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 684.

No. 96–6230. Sweed *v.* Texas Board of Criminal Justice. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1444.

No. 96–6232. Vickson *v.* Singletary, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied. Reported below: 677 So. 2d 842.

No. 96–6233. Thompson et al. *v.* Kramer et al. C. A. Fed. Cir. Certiorari denied. Reported below: 77 F. 3d 502.

No. 96–6243. Jackson *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 186 Ariz. 20, 918 P. 2d 1038.

No. 96–6245. Kirkpatrick *v.* Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 423 Mass. 436, 668 N. E. 2d 790.

No. 96–6246. Truesdale *v.* Moore, Director, South Carolina Department of Corrections. Ct. Common Pleas of Lancaster County, S. C. Certiorari denied.

No. 96–6248. Moates *v.* Walker, Superintendent, Auburn Correctional Facility, et al. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 1392.

No. 96–6249. Mazzell *v.* Moore, Director, South Carolina Department of Corrections, et al. C. A. 4th Cir. Certiorari denied. Reported below: 88 F. 3d 263.

No. 96–6251. Nawachie *v.* Department of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 79 F. 3d 1163.

No. 96–6280. Earnest *v.* Dorsey, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 87 F. 3d 1123.

No. 96–6290. Rawlins *v.* Allen, Clerk, Superior Court of Arizona, Maricopa County, et al. C. A. 9th Cir. Certiorari denied. Reported below: 77 F. 3d 490.

No. 96–6299. Nesbitt *v.* Hopkins, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 86 F. 3d 118.

No. 96–6302. Steele *v.* City of Los Angeles et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–6312. Wilson *v.* Netherland, Warden. Sup. Ct. Va. Certiorari denied.

No. 96–6317. Preston *v.* Berry, Warden. C. A. 6th Cir. Certiorari denied.

No. 96–6330. White *v.* Gregory et al. C. A. 10th Cir. Certiorari denied. Reported below: 87 F. 3d 429.

No. 96–6332. Hawkins *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 75 Ohio St. 3d 1475, 663 N. E. 2d 1302.

No. 96–6339. McKenzie *v.* West Virginia. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 197 W. Va. 429, 475 S. E. 2d 521.

No. 96–6342. Rendelman *v.* Keohane, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1181.

No. 96–6354. Andrews *v.* United States; and
No. 96–6425. Grimes *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 90 F. 3d 1110.

No. 96–6363. Barton *v.* Morris, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 91 F. 3d 143.

No. 96–6368. MEACHAM *v.* UNITED STATES; and
No. 96–6477. BOTELLO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 95 F. 3d 1153.

No. 96–6371. PLANTE *v.* IPSWICH POLICE DEPARTMENT ET AL. App. Ct. Mass. Certiorari denied. Reported below: 40 Mass. App. 1122, 664 N. E. 2d 1208.

No. 96–6372. SCHNEIDER *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 85 F. 3d 335.

No. 96–6385. WUTTHIDETGRAINGGRAI ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 686.

No. 96–6387. GODAIRE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–6391. CALLINS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 89 F. 3d 210.

No. 96–6409. MEREDITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1183.

No. 96–6412. SIMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 96–6413. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 1214.

No. 96–6415. MOSCHGAT *v.* WORKMEN'S COMPENSATION APPEAL BOARD OF PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied.

No. 96–6424. DE. D. *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Certiorari denied. Reported below: 664 A. 2d 337.

No. 96–6426. LY TRINH HINH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 45.

No. 96–6434. WRONKE *v.* MADIGAN, SHERIFF, CHAMPAIGN COUNTY, ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 96–6443. CORDOBA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 471.

No. 96–6448. WILD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 92 F. 3d 304.

No. 96–6454. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 95 F. 3d 500.

No. 96–6456. COBB *v.* THURMAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 650.

No. 96–6458. SEWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 90 F. 3d 326.

No. 96–6464. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 88 F. 3d 920.

No. 96–6465. RIVERA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 686.

No. 96–6466. KEMP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 1194.

No. 96–6467. GILES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1183.

No. 96–6469. BEASLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 90 F. 3d 400.

No. 96–6471. ZAKIYA *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 136.

No. 96–6472. MCMAHON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 91 F. 3d 1394.

No. 96–6475. DYCE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 91 F. 3d 1462.

No. 96–6476. COTRONEO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 510.

No. 96–6479. LUBIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 135.

No. 96–6482. POLAK-RUDICH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 92 F. 3d 1190.

No. 96–6486. IRELAND *v.* LOWE. C. A. 10th Cir. Certiorari denied. Reported below: 92 F. 3d 1196.

No. 96–6487. RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 1195.

No. 96–6488. WARD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 92 F. 3d 1197.

No. 96–6489. WARD *v.* NORTH CAROLINA. Super. Ct. N. C., Pitt County. Certiorari denied.

No. 96–6491. SIMPSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 693.

No. 96–6492. FOUTCH *v.* ALASKA. Super. Ct. Alaska, 4th Jud. Dist. Certiorari denied.

No. 96–6495. ROBERTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 86 F. 3d 1156.

No. 96–6497. ARNOLD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 92 F. 3d 1186.

No. 96–6498. ALVAREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 92 F. 3d 1197.

No. 96–6501. GOGGANS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–6503. O'ROURKE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1436.

No. 96–6506. ALI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1182.

No. 96–6508. CAMPOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 87 F. 3d 261.

No. 96–6509. STEWARD *v.* DALTON, SECRETARY OF THE NAVY. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1152.

No. 96–6511. JEFFERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 88 F. 3d 240.

No. 96–6512. BERNAL-ARROYAVE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 854.

No. 96–6513. Scurlock *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 84 F. 3d 912.

No. 96–6515. Smith *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 92 F. 3d 1188.

No. 96–6523. O'Neil *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 835.

No. 96–6525. Byrd *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 100 F. 3d 948.

No. 96–6526. Simmons *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1436.

No. 96–6527. Brosky *v.* Texas. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 915 S. W. 2d 120.

No. 96–6532. Hall *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 54.

No. 96–6533. Smith *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 92 F. 3d 1188.

No. 96–6535. Evans *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 92 F. 3d 540.

No. 96–6537. Guzman, aka Guzman Rivera *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 85 F. 3d 823.

No. 96–6538. Arocho Gonzalez *v.* United States; and
No. 96–6575. Arocho Gonzalez *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 91 F. 3d 121.

No. 96–6539. McKnight *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1183.

No. 96–6540. Ford *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 54.

No. 96–6542. Weatherwax *v.* Government of the Virgin Islands. C. A. 3d Cir. Certiorari denied. Reported below: 77 F. 3d 1425.

No. 96–6545. Baker *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 82 F. 3d 273.

No. 96–6548. MILAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 96 F. 3d 1440.

No. 96–6553. EDWARDS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 93 F. 3d 986.

No. 96–6555. McCREE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 96–6556. ARGENTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1158.

No. 96–6563. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 92 F. 3d 1186.

No. 96–6565. DAVIDSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1435.

No. 96–6566. MARIN-MONTOYA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 100 F. 3d 970.

No. 96–6599. LABARCK ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 693.

No. 96–6623. ROACH *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 146 N. J. 208, 680 A. 2d 634.

No. 96–516. R. R. DONNELLEY & SONS CO. *v.* FUCHS, EXECUTIVE DIRECTOR, FLORIDA DEPARTMENT OF REVENUE, ET AL. Dist. Ct. App. Fla., 1st Dist. Motions of Newspaper Association of America and Printing Industries of America et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 670 So. 2d 113.

No. 96–534. ANCHONDO ET AL. *v.* CYPRUS MINERALS CO. ET AL. Ct. App. Ariz. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

No. 96–545. SMITH *v.* REGIONAL TRANSPORTATION DISTRICT ET AL. C. A. 10th Cir. Motion of respondents for award of damages and double costs denied. Certiorari denied. Reported below: 91 F. 3d 159.

No. 96–6713 (A–356). BEAVER *v.* NETHERLAND, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE BREYER would grant the application for stay of execution. Reported below: 93 F. 3d 1186.

Rehearing Denied

No. 95–1246. SMITH *v.* RUNYON, POSTMASTER GENERAL, 517 U. S. 1188;

No. 95–1821. MARABLE *v.* MICHIGAN, *ante*, p. 811;

No. 95–1851. HOLMES *v.* GRIFFIN, *ante*, p. 812;

No. 95–1944. PIPPIN *v.* BENNETT, *ante*, p. 817;

No. 95–1964. HINCHLIFFE ET UX. *v.* TRANSAMERICA FINANCIAL CONSUMER DISCOUNT CO., *ante*, p. 818;

No. 95–1970. SUEHL *v.* SUEHL, *ante*, p. 818;

No. 95–2001. COWHIG *v.* WEST, SECRETARY OF THE ARMY, ET AL., *ante*, p. 820;

No. 95–2046. HOWARD *v.* TOWN OF CHAPEL HILL ET AL., *ante*, p. 822;

No. 95–2089. STROBRIDGE *v.* NEW YORK ET AL., *ante*, p. 825;

No. 95–2092. FARUQUI *v.* CALIFORNIA ET AL., *ante*, p. 825;

No. 95–6127. WALTERS *v.* ALLSTATE INSURANCE CO., 516 U. S. 1050;

No. 95–8346. GARZA *v.* UNITED STATES, *ante*, p. 825;

No. 95–8811. HEMMERLE *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL., *ante*, p. 828;

No. 95–8905. WARREN *v.* UNITED STATES, *ante*, p. 831;

No. 95–9013. GODAIRE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 834;

No. 95–9058. MITCHELL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 836;

No. 95–9100. STEWART *v.* GRAMLEY, WARDEN, *ante*, p. 838;

No. 95–9106. NOURAIE *v.* WEST, SECRETARY OF THE ARMY, *ante*, p. 838;

No. 95–9130. KLOPP *v.* UNITED STATES ET AL., *ante*, p. 839;

No. 95–9132. JACKSON *v.* KESSLER, *ante*, p. 839;

No. 95–9133. JONES, AKA LEE *v.* UNITED STATES, *ante*, p. 948;

No. 95–9156. BABA *v.* WARREN MANAGEMENT CONSULTANTS, INC., ET AL., *ante*, p. 840;

No. 95–9158. Barberena-Jimenez *v.* United States, *ante,* p. 841;

No. 95–9165. Kumar *v.* United States, *ante,* p. 841;

No. 95–9255. Yurtis, aka Coan *v.* Jones et ux., *ante,* p. 846;

No. 95–9283. Nguyen *v.* Department of Defense, *ante,* p. 848;

No. 95–9337. Carr *v.* Louisiana, *ante,* p. 851;

No. 95–9364. Aguilar *v.* New Mexico, *ante,* p. 852;

No. 95–9433. Krueger *v.* Woods, Warden, *ante,* p. 856;

No. 95–9452. Fortescue *v.* Simpson et al., *ante,* p. 857;

No. 95–9457. Harper *v.* United States District Court for the District of Kansas et al., *ante,* p. 858;

No. 95–9461. In re Williams, *ante,* p. 806;

No. 95–9469. Smith *v.* National Corporation of Housing Partnerships, *ante,* p. 859;

No. 95–9487. Taylor *v.* Louisiana, *ante,* p. 860;

No. 95–9496. Barth *v.* United States, *ante,* p. 860;

No. 96–10. In re Geschke et ux., *ante,* p. 861;

No. 96–57. Schiffer *v.* Tarrytown Boat Club, Inc., et al., *ante,* p. 864;

No. 96–92. Wolf *v.* Buss America, Inc., *ante,* p. 866;

No. 96–96. Wyshak *v.* American Savings Bank, F. A., et al., *ante,* p. 866;

No. 96–127. Greene *v.* City of Montgomery, *ante,* p. 867;

No. 96–158. St. Hilaire et al. *v.* Maine Real Estate Commission, *ante,* p. 869;

No. 96–161. Cornish *v.* District of Columbia Board on Professional Responsibility, *ante,* p. 869;

No. 96–314. Schapiro *v.* Schapiro (two judgments), *ante,* p. 931;

No. 96–5062. Anderson *v.* Fischbach & Moore, Inc., et al., *ante,* p. 876;

No. 96–5092. Phelps et ux. *v.* Denton County Sheriff et al., *ante,* p. 878;

No. 96–5094. Baker *v.* Runyon, Postmaster General, et al., *ante,* p. 879;

No. 96–5095. Demarey *v.* United States, *ante,* p. 879;

No. 96–5096. Oliver *v.* Mazurkiewicz, Superintendent, State Correctional Institution at Rockview, et al., *ante,* p. 879;

No. 96–5106. NEWPORT *v.* MICHELIN AIRCRAFT TIRE, AKA MICHELIN TIRE CORP., *ante,* p. 879;

No. 96–5122. AYEBOUA *v.* DISTRICT OF COLUMBIA ET AL., *ante,* p. 880;

No. 96–5142. HAYES *v.* CORRECTION MANAGEMENT AFFILIATES, INC., ET AL., *ante,* p. 881;

No. 96–5152. CHILDS *v.* OHIO ET AL., *ante,* p. 882;

No. 96–5177. MARTEL *v.* NEW HAMPSHIRE, *ante,* p. 883;

No. 96–5196. CROWDER *v.* UNITED STATES, *ante,* p. 885;

No. 96–5275. BRETSCHNEIDER *v.* BROWN, *ante,* p. 889;

No. 96–5314. COOK ET UX. *v.* BOYD, *ante,* p. 891;

No. 96–5320. DEMPSEY *v.* MASSACHUSETTS, *ante,* p. 892;

No. 96–5364. TUGGLE *v.* NETHERLAND, WARDEN, *ante,* p. 894;

No. 96–5367. STAUP *v.* FIRST UNION NATIONAL BANK OF FLORIDA ET AL., *ante,* p. 894;

No. 96–5390. WISHNATSKY *v.* BERGQUIST ET AL., *ante,* p. 895;

No. 96–5410. RICHARDS *v.* GENERAL SERVICES ADMINISTRATION, *ante,* p. 896;

No. 96–5419. BROWN *v.* RUBIN, SECRETARY OF THE TREASURY, ET AL., *ante,* p. 897;

No. 96–5477. BECKER *v.* SOUTHWEST TRAVIS COUNTY ROAD DISTRICT No. 1, *ante,* p. 933; and

No. 96–5480. BILLIS *v.* UNITED STATES, *ante,* p. 900. Petitions for rehearing denied.

No. 95–1933. ROGERS ET AL. *v.* ROGERS ET AL., *ante,* p. 816. Motion of petitioner for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

No. 95–8885. SIEGEL *v.* DOE ET AL., *ante,* p. 830. Motion for leave to file petition for rehearing denied.

DECEMBER 4, 1996

Certiorari Denied

No. 96–6907 (A–384). MILLS *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA, ET AL. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 686 So. 2d 580.

DECEMBER 5, 1996

Miscellaneous Order

No. 96–6953 (A–401). IN RE MILLS. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 96–6908. MEDINA *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 686 So. 2d 580.

No. 96–6949 (A–400). MILLS *v.* FLORIDA. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 684 So. 2d 801.

DECEMBER 6, 1996

Miscellaneous Order

No. 84, Orig. UNITED STATES *v.* ALASKA. Exceptions to Report of the Special Master set for oral argument in due course. Motion of Sierra Club et al. for leave to file a brief as *amicus curiae* granted. [For earlier order herein, see, *e. g.*, 517 U. S. 1207.]

Probable Jurisdiction Noted

No. 96–511. RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. *v.* AMERICAN CIVIL LIBERTIES UNION ET AL. Appeal from D. C. E. D. Pa. Probable jurisdiction noted. Brief of appellants is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, January 21, 1997. Briefs of appellees are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, February 20, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 7, 1997. This Court's Rule 29.2 does not apply. Reported below: 929 F. Supp. 824.

Certiorari Granted

No. 96–542. MCMILLIAN *v.* MONROE COUNTY, ALABAMA. C. A. 11th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, January 21, 1997. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, February 20, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 7, 1997. This Court's Rule 29.2 does not apply. Reported below: 88 F. 3d 1573.

DECEMBER 9, 1996

Miscellaneous Orders

No. D-1721. IN RE DISBARMENT OF BARTRON. Disbarment entered. [For earlier order herein, see 518 U. S. 1052.]

No. D-1731. IN RE DISBARMENT OF BROWN. Disbarment entered. [For earlier order herein, see *ante*, p. 923.]

No. D-1732. IN RE DISBARMENT OF SILVER. Disbarment entered. [For earlier order herein, see *ante*, p. 923.]

No. D-1757. IN RE DISBARMENT OF TAFFER. Jack J. Taffer, of Miami, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D-1758. IN RE DISBARMENT OF MORRELL. Michael Xavier Morrell, of Washington, D. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M-36. ABATE *v.* WALTON. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. M-37. CROSS *v.* CALIFORNIA; and

No. M-38. CROSS *v.* MURPHY. Motions for leave to proceed *in forma pauperis* without affidavits of indigency executed by petitioner denied.

No. 95-1621. HARBOR TUG & BARGE CO. *v.* PAPAI ET UX. C. A. 9th Cir. [Certiorari granted, 518 U. S. 1055.] Motion of Shipbuilders Council of America et al. for leave to file a brief as *amici curiae* granted.

No. 95–1764. Saratoga Fishing Co. *v.* J. M. Martinac & Co. et al. C. A. 9th Cir. [Certiorari granted, *ante*, p. 926.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 96–262. Edmond *v.* United States; Lazenby *v.* United States; Leaver *v.* United States; Leonard *v.* United States; Nichols *v.* United States; and Venable *v.* United States. C. A. Armed Forces. [Certiorari granted, *ante*, p. 977.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 95–2031. Young et al. *v.* Fordice et al. D. C. S. D. Miss. [Probable jurisdiction noted, 518 U. S. 1055.] Motion of Community Service Society of New York et al. for leave to file a brief as *amici curiae* granted.

No. 96–110. Washington et al. *v.* Glucksberg et al. C. A. 9th Cir. [Certiorari granted, 518 U. S. 1057.] Motion of Schiller Institute for leave to file a brief as *amicus curiae* granted.

No. 96–5534. Hoffmann *v.* Hoffmann. Ct. App. Md. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 925] denied.

No. 96–6681. In re Nagy; and
No. 96–6749. In re Peth. Petitions for writs of habeas corpus denied.

No. 96–6268. In re Sherrills. Petition for writ of mandamus denied.

Certiorari Denied

No. 95–9209. Grandison *v.* Maryland. Ct. App. Md. Certiorari denied. Reported below: 341 Md. 175, 670 A. 2d 398.

No. 96–180. Herring et al. *v.* Federal Deposit Insurance Corporation. C. A. 9th Cir. Certiorari denied. Reported below: 82 F. 3d 282.

No. 96–317. McClain, Judge, Vigo County Court *v.* Indiana Commission on Judicial Qualifications. Sup. Ct. Ind. Certiorari denied. Reported below: 662 N. E. 2d 935.

No. 96–345. GREENE ET UX. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 79 F. 3d 1348.

No. 96–350. STARZENSKI ET AL. *v.* CITY OF ELKHART ET AL. Ct. App. Ind. Certiorari denied. Reported below: 659 N. E. 2d 1132.

No. 96–353. GREEN *v.* PHOENIX INSTITUTE FOR RESEARCH & EDUCATION, LTD. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1719.

No. 96–389. LEONARD *v.* TOWN OF BRIMFIELD ET AL.; and
No. 96–605. TOWN OF BRIMFIELD ET AL. *v.* LEONARD. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 423 Mass. 152, 666 N. E. 2d 1300.

No. 96–526. JOHNSON *v.* ZSCHACH. Sup. Ct. Ohio. Certiorari denied. Reported below: 75 Ohio St. 3d 648, 665 N. E. 2d 1070.

No. 96–530. KOREAN AIR LINES CO., LTD. *v.* FORMAN. C. A. D. C. Cir. Certiorari denied. Reported below: 84 F. 3d 446.

No. 96–536. H. J. HEINZ CO. ET AL. *v.* DAYHOFF, INC. C. A. 3d Cir. Certiorari denied. Reported below: 86 F. 3d 1287.

No. 96–550. CHASE ET AL. *v.* LOCKHEED CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 570.

No. 96–554. SMILECARE DENTAL GROUP *v.* DELTA DENTAL PLAN OF CALIFORNIA, INC. C. A. 9th Cir. Certiorari denied. Reported below: 88 F. 3d 780.

No. 96–556. ARKANSAS *v.* BRADFORD. Sup. Ct. Ark. Certiorari denied. Reported below: 325 Ark. 278, 927 S. W. 2d 329.

No. 96–561. PLETZ *v.* THOENY ET UX. Ct. App. Wash. Certiorari denied.

No. 96–570. SORKIN ET AL. *v.* COUNTY OF SANTA CRUZ. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 96–574. HETZEL *v.* PRINCE WILLIAM COUNTY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 169.

No. 96–579. REYNOLDS, DBA REYNOLDS FISHERIES, ET AL. *v.* BUCHHOLZER, DIRECTOR, OHIO DEPARTMENT OF NATURAL RESOURCES, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 87 F. 3d 827.

No. 96–586. Arizona Central Railroad *v.* Arizona et al. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 438.

No. 96–610. Weiss *v.* Moreno Valley Unified High School District et al. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1318.

No. 96–611. McIntosh et al. *v.* Jackson. C. A. 9th Cir. Certiorari denied. Reported below: 90 F. 3d 330.

No. 96–623. Saavedra, Special Administratrix of the Estates of Yamaguchi et al., Deceased *v.* Korean Air Lines Co., Ltd. C. A. 9th Cir. Certiorari denied. Reported below: 93 F. 3d 547.

No. 96–624. Rehman *v.* ECC International Corp. et al. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 673 So. 2d 46.

No. 96–633. Guerra *v.* Communications Workers of America, AFL–CIO. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 140.

No. 96–637. Troutwine Family Trust *v.* County of Nevada et al. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 96–638. Ganyo *v.* Seguin Independent School District et al. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 51.

No. 96–654. Brown et al. *v.* First State Bank of Harvard et al. C. A. 7th Cir. Certiorari denied.

No. 96–664. Williams et al. *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 96–668. City of San Juan, Texas *v.* North Alamo Water Supply Corp. C. A. 5th Cir. Certiorari denied. Reported below: 90 F. 3d 910.

No. 96–671. Lawrence et al. *v.* Melissa Holdings, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1153.

No. 96–692. Taylor *v.* Principal Financial Group, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 93 F. 3d 155.

No. 96–693. Mizani, aka Marjani *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1436.

No. 96–697. Arnold *v.* Boatmen's National Bank of Belleville. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 838.

No. 96–722. Borden, Inc. *v.* National Labor Relations Board. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 54.

No. 96–732. Godshalk *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 44 M. J. 487.

No. 96–733. Vaughters *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 44 M. J. 377.

No. 96–5124. Smith *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 919 S. W. 2d 96.

No. 96–5555. Viswanathan *v.* Scotland County Board of Education et al. C. A. 4th Cir. Certiorari denied. Reported below: 76 F. 3d 376.

No. 96–5703. Ransom *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 920 S. W. 2d 288.

No. 96–5758. Whitehead *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 169 Ill. 2d 355, 662 N. E. 2d 1304.

No. 96–5779. Cole *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 172 Ill. 2d 85, 665 N. E. 2d 1275.

No. 96–5833. Blue *v.* Mississippi. Sup. Ct. Miss. Certiorari denied. Reported below: 674 So. 2d 1184.

No. 96–5881. Richardson *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 86 F. 3d 1537.

No. 96–5888. Narlock *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 162.

No. 96–6250. Martinez-Villareal *v.* Stewart, Director, Arizona Department of Corrections. C. A. 9th Cir. Certiorari denied. Reported below: 80 F. 3d 1301.

No. 96–6254. Houghteling *v.* Hutchinson. Ct. App. Mich. Certiorari denied.

No. 96–6261. Hain *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 919 P. 2d 1130.

No. 96–6262. Irving *v.* City of College Station et al. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 48.

No. 96–6267. Smith *v.* Puckett et al. Sup. Ct. Miss. Certiorari denied.

No. 96–6269. Omoike *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 679 So. 2d 443.

No. 96–6270. Williams *v.* Singletary, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 96–6272. Toerper *v.* Trotter et al. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 623.

No. 96–6273. Wanzer *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 96–6274. Allard *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 75 Ohio St. 3d 482, 663 N. E. 2d 1277.

No. 96–6277. Graham *v.* New Jersey. Super. Ct. N. J., App. Div. Certiorari denied.

No. 96–6281. Glant *v.* Glant. Sup. Ct. Fla. Certiorari denied. Reported below: 678 So. 2d 338.

No. 96–6282. Davis *v.* Goord, Acting Commissioner, New York Department of Correctional Services, et al. C. A. 2d Cir. Certiorari denied.

No. 96–6283. Muhammad *v.* Nuchia. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 138.

No. 96–6287. Belcher *v.* Lesley et al. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 96–6292. Aaron *v.* Cunningham et al. C. A. 3d Cir. Certiorari denied.

No. 96–6294. STRAUB *v.* ZOLLAR. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 278 Ill. App. 3d 556, 663 N. E. 2d 80.

No. 96–6300. LOOMER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 76 Ohio St. 3d 398, 667 N. E. 2d 1209.

No. 96–6314. KENNEY *v.* STARK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 307.

No. 96–6321. MESSERSCHMIDT *v.* RILEY, SECRETARY OF EDUCATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1459.

No. 96–6340. OLSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 96–6355. LAIRD *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 186 Ariz. 203, 920 P. 2d 769.

No. 96–6374. HANSON *v.* STEPANIK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–6375. FEINSTEIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1169.

No. 96–6462. SELBY *v.* ABRAHAM, DISTRICT ATTORNEY OF PHILADELPHIA COUNTY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–6473. HUNT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 624.

No. 96–6505. NICHOLSON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 85 F. 3d 643.

No. 96–6528. HAMPTON *v.* UNIVERSITY OF MARYLAND AT BALTIMORE. Ct. Sp. App. Md. Certiorari denied. Reported below: 109 Md. App. 297, 674 A. 2d 145.

No. 96–6536. MITCHELL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 1148.

No. 96–6550. AKINS *v.* RICHARDSON, COMMISSIONER OF INTERAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 85 F. 3d 644.

No. 96–6558. ORLANDO RIVAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 193.

No. 96–6562. COLON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 95 F. 3d 57.

No. 96–6564. OWENS *v.* PRESBYTERIAN HOSPITAL. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 682.

No. 96–6576. ALLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 53.

No. 96–6583. HAYNES *v.* TOWN OF SUMMERVILLE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 130.

No. 96–6584. WEEKS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 683 A. 2d 60.

No. 96–6592. WEXLER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 104 F. 3d 350.

No. 96–6594. VOSS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1160.

No. 96–6596. DICK *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 94 F. 3d 647.

No. 96–6598. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 99 F. 3d 1153.

No. 96–6603. BROWN *v.* STEPANIK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–6606. FUJINAKA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 156.

No. 96–6618. ARNOLD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 86 F. 3d 1155.

No. 96–6625. COMER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 93 F. 3d 1271.

No. 96–6626. CATHCART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 99 F. 3d 1152.

No. 96–6628. MAYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 95 F. 3d 57.

No. 96–6630. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 855.

No. 96–6632. FELICIANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 96 F. 3d 1456.

No. 96–6634. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 94 F. 3d 642.

No. 96–6635. GREEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 126.

No. 96–6643. JOHNSON *v.* MCCAUGHTRY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 92 F. 3d 585.

No. 96–6648. BARFIELD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1168.

No. 96–6652. CASANOVA ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 91 F. 3d 160.

No. 96–6662. FARNSWORTH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 92 F. 3d 1001.

No. 96–6663. MCNEIL, AKA MCNEILL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 90 F. 3d 298.

No. 96–6667. DARBY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 681 A. 2d 1156.

No. 96–6669. TURNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 93 F. 3d 276.

No. 96–6671. WILLIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 842.

No. 96–358. NORFOLK & WESTERN RAILWAY CO. *v.* CHITTUM. Sup. Ct. Va. Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 251 Va. 408, 468 S. E. 2d 877.

No. 96–6291. KIMBLE *v.* REHNQUIST, CHIEF JUSTICE OF THE UNITED STATES. C. A. 9th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 77 F. 3d 489.

Rehearing Denied

No. 94–7620. WILLIAMS *v.* METROPOLITAN TRANSIT AUTHORITY ET AL., 514 U. S. 1006;

No. 95–1439. LAKOSKI *v.* UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON, *ante*, p. 947;

No. 95–8984. CHAUDHARY *v.* O'NEIL ET AL., *ante*, p. 833;

No. 95–9033. JOHNSON *v.* UNITED STATES, *ante*, p. 948;

No. 95–9235. IN RE BENTON, *ante*, p. 806;

No. 95–9301. FULLER *v.* BOARD OF SELECTMEN FOR THE TOWN OF CANTON ET AL., *ante*, p. 849;

No. 95–9311. JONES *v.* BAUSCH & LOMB, INC., *ante*, p. 850;

No. 96–47. FLEENOR *v.* HEWITT SOAP CO. ET AL., *ante*, p. 863;

No. 96–218. SHUMATE *v.* NATIONSBANK, *ante*, p. 871;

No. 96–237. LOCKMILLER *v.* SUPERIOR COURT OF CALIFORNIA, SANTA CLARA COUNTY, *ante*, p. 929;

No. 96–244. IN RE SMITH, *ante*, p. 948;

No. 96–248. ALLGOOD, INDIVIDUALLY AND AS INDEPENDENT EXECUTRIX OF THE ESTATE OF ALLGOOD, DECEASED, ET AL. *v.* R. J. REYNOLDS TOBACCO CO. ET AL., *ante*, p. 930;

No. 96–258. HARDIN *v.* CUNNINGHAM, *ante*, p. 930;

No. 96–384. WYSHAK *v.* AMERICAN SAVINGS BANK, F. A., ET AL., *ante*, p. 950;

No. 96–5179. GADSON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 884;

No. 96–5413. FELDER *v.* STOCK, WARDEN, ET AL., *ante*, p. 897;

No. 96–5490. GABOR ET UX. *v.* FRAZER ET AL., *ante*, p. 934;

No. 96–5529. SPURGETIS *v.* UNITED STATES JUDICIARY, *ante*, p. 934;

No. 96–5540. SEPULVADO *v.* LOUISIANA, *ante*, p. 934;

No. 96–5549. TART *v.* LOUISIANA, *ante*, p. 934;

No. 96–5567. JEFFRIES *v.* OKLAHOMA, *ante*, p. 935;

No. 96–5575. ROBINSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 935;

No. 96–5582. MARK *v.* UNITED STATES, *ante*, p. 904;

No. 96–5625. JOHNSON *v.* SHILLINGER, WARDEN, ET AL., *ante*, p. 936;

No. 96–5669. IN RE PARENTEAU, *ante*, p. 806;

No. 96–5690. STEELE *v.* CALIFORNIA DEPARTMENT OF SOCIAL SERVICES ET AL., *ante*, p. 952;

No. 96–5697. JEMZURA *v.* NEW YORK STATE ELECTRIC & GAS CORP. ET AL., *ante*, p. 953;

No. 96–5730. KAMMEFA *v.* MARYLAND DEPARTMENT OF AGRICULTURE, *ante*, p. 908;

No. 96–5741. BROWN *v.* FERGUSON, WARDEN, ET AL., *ante*, p. 953;

No. 96–5749. LAWRENCE *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 937;

No. 96–5892. IVERSON ET AL. *v.* GRANT ET AL., *ante*, p. 976;

No. 96–5893. MOSELEY *v.* UNITED STATES, *ante*, p. 941;

No. 96–5936. BIERLEY *v.* FRANZ, DISTRICT DIRECTOR, PENNSYLVANIA BOARD OF PROBATION AND PAROLE, *ante*, p. 954;

No. 96–5966. O'BRIEN *v.* UNITED STATES, *ante*, p. 942; and

No. 96–6007. CAMPBELL *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, *ante*, p. 943. Petitions for rehearing denied.

No. 95–9407. MESERVY *v.* MESERVY, *ante*, p. 855. Motion for leave to file petition for rehearing denied.

DECEMBER 10, 1996

Miscellaneous Order

No. 96–6992 (A–418). IN RE ZEITVOGEL. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 96–6925 (A–392). STOUT *v.* NETHERLAND, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 95 F. 3d 42.

No. 96–7009 (A–420). ZEITVOGEL *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 103 F. 3d 56.

DECEMBER 16, 1996

Certiorari Granted—Reversed and Remanded. (See No. 96-5369, *ante*, p. 145.)

Miscellaneous Orders

No. D–1564. IN RE DISBARMENT OF MURASKI. Disbarment entered. [For earlier order herein, see 515 U. S. 1156.]

No. D–1723. IN RE DISBARMENT OF PEAVY. Don E. Peavy, Sr., of Fort Worth, Tex., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on September 20, 1996 [518 U. S. 1052], is discharged.

No. D–1729. IN RE DISBARMENT OF GILBERT. Disbarment entered. [For earlier order herein, see *ante*, p. 802.]

No. D–1737. IN RE DISBARMENT OF GILL. Disbarment entered. [For earlier order herein, see *ante*, p. 946.]

No. D–1759. IN RE DISBARMENT OF PLUST. Paul Neal Plust, of Brooklyn, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1760. IN RE DISBARMENT OF GOMRIC. James John Gomric, of Belleville, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–1. LAWRENCE *v.* SECRETARY OF THE TREASURY. Motion for reconsideration of order denying leave to file petition for writ of certiorari out of time [*ante*, p. 803] denied.

No. M–39. ATKINSON *v.* OGLESBY PLANT LABORATORIES, INC.; and

No. M–40. AMERICAN LEGION POST NO. 3 *v.* SEPARATION OF CHURCH AND STATE COMMITTEE ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. M–45. HOLTZ ET AL. *v.* SMITH. Motion to treat an untimely petition for writ of certiorari as a conditional cross-petition for writ of certiorari denied.

No. 84, Orig. UNITED STATES *v.* ALASKA. Motion of Alaska for additional time for oral argument granted, and 30 additional minutes are allotted for that purpose. Motion of California for leave to participate in oral argument as *amicus curiae* and for divided argument denied. [For earlier order herein, see, *e. g., ante,* p. 1025.]

No. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Motion of the Special Master for compensation and reimbursement of expenses granted, and the Special Master is awarded a total of $19,530 for the period June 1 through November 15, 1996, to be paid as follows: 30% by Nebraska, 30% by Wyoming, 15% by Colorado, and 25% by the United States. [For earlier order herein, see, *e. g.,* 518 U. S. 1002.]

No. 120, Orig. NEW JERSEY *v.* NEW YORK. Motion of the Special Master for compensation and reimbursement of expenses granted, and the Special Master is awarded a total of $255,157.62 for the period May 15 through November 15, 1996, to be paid equally by the parties. [For earlier order herein, see, *e. g.,* 517 U. S. 1242.]

No. 95–1425. ABRAMS ET AL. *v.* JOHNSON ET AL.; and

No. 95–1460. UNITED STATES *v.* JOHNSON ET AL. D. C. S. D. Ga. [Probable jurisdiction noted, 517 U. S. 1207.] Motion of appellees Davida Johnson et al. to supplement the record denied.

No. 95–1621. HARBOR TUG & BARGE CO. *v.* PAPAI ET UX. C. A. 9th Cir. [Certiorari granted, 518 U. S. 1055.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–1872. STRATE, ASSOCIATE TRIBAL JUDGE, TRIBAL COURT OF THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD INDIAN RESERVATION, ET AL. *v.* A–1 CONTRACTORS ET AL. C. A. 8th Cir. [Certiorari granted, 518 U. S. 1056.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–2031. YOUNG ET AL. *v.* FORDICE ET AL. D. C. S. D. Miss. [Probable jurisdiction noted, 518 U. S. 1055.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 96–79. BOGGS *v.* BOGGS ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 957.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–1858. VACCO, ATTORNEY GENERAL OF NEW YORK, ET AL. *v.* QUILL ET AL. C. A. 2d Cir. [Certiorari granted, 518 U. S. 1055.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Wayne County, Michigan, for leave to file a brief as *amicus curiae* granted.

No. 96–110. WASHINGTON ET AL. *v.* GLUCKSBERG ET AL. C. A. 9th Cir. [Certiorari granted, 518 U. S. 1057.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Wayne County, Michigan, for leave to file a brief as *amicus curiae* granted.

No. 96–568. ONCALE *v.* SUNDOWNER OFFSHORE SERVICES, INC., ET AL. C. A. 5th Cir.; and

No. 96–577. TRISTAR CORP. *v.* FREITAS ET AL. C. A. 2d Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 96–6834. IN RE VALENCIA; and

No. 96–6835. IN RE KING. Petitions for writs of habeas corpus denied.

No. 96–6344. IN RE REIMAN; and

No. 96–6356. IN RE JOHNSON. Petitions for writs of mandamus denied.

Certiorari Denied

No. 95–1641. BRABSON ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 73 F. 3d 1040.

No. 96–371. Clayton et al. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 91 F. 3d 170.

No. 96–395. Brown *v.* West, Secretary of the Army. C. A. D. C. Cir. Certiorari denied. Reported below: 78 F. 3d 645.

No. 96–397. Samuel *v.* Immigration and Naturalization Service. C. A. 10th Cir. Certiorari denied. Reported below: 81 F. 3d 173.

No. 96–423. Coulter et al. *v.* Metropolitan Life Insurance Co., Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 78 F. 3d 1533 and 92 F. 3d 1074.

No. 96–565. O'Connor *v.* Consolidated Coin Caterers Corp. C. A. 4th Cir. Certiorari denied. Reported below: 84 F. 3d 718.

No. 96–569. McKay *v.* Jobin, Trustee, Estate of M & L Business Machine Co., Inc. C. A. 10th Cir. Certiorari denied. Reported below: 84 F. 3d 1330.

No. 96–583. Roslyn Union Free School District No. 3 et al. *v.* Hsu, by and Through Her Next Friend, Hsu, et al. C. A. 2d Cir. Certiorari denied. Reported below: 85 F. 3d 839.

No. 96–584. Prince et ux. *v.* Unsecured Creditors Committee. C. A. 7th Cir. Certiorari denied. Reported below: 85 F. 3d 314.

No. 96–585. Ethier *v.* Larson et al. Ct. App. Minn. Certiorari denied.

No. 96–588. Washington Times Corp. *v.* Berman. C. A. D. C. Cir. Certiorari denied.

No. 96–592. Spear, Leeds & Kellogg *v.* Central Life Assurance Co. et al. C. A. 2d Cir. Certiorari denied. Reported below: 85 F. 3d 21.

No. 96–593. Living Springs Retreat *v.* County of Putnam et al. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 215 App. Div. 2d 449, 626 N. Y. S. 2d 268.

No. 96–594. MUDIE *v.* MILTLAND RALEIGH-DURHAM. Ct. App. N. C. Certiorari denied. Reported below: 122 N. C. App. 168, 468 S. E. 2d 275.

No. 96–599. GLENBROOK CO. *v.* ERNST HOME CENTER, INC. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1161.

No. 96–606. INDU CRAFT, INC. *v.* BANK OF BARODA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 87 F. 3d 614.

No. 96–609. TONAWANDA BAND OF SENECA INDIANS ET AL. *v.* POODRY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 85 F. 3d 874.

No. 96–612. SHEFFIELD *v.* ANDREWS, INDIVIDUALLY AND AS ATTORNEY-IN-FACT FOR PUGH. Sup. Ct. Ala. Certiorari denied. Reported below: 679 So. 2d 1052.

No. 96–613. GENERAL TRUCK DRIVERS AND HELPERS UNION LOCAL NO. 92, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO *v.* WILSON. C. A. 6th Cir. Certiorari denied. Reported below: 83 F. 3d 747.

No. 96–616. BILLMAN *v.* DEPARTMENT OF HUMAN SERVICES, FRANKLIN COUNTY, OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 96–617. HYLAND HILL NORTH CONDOMINIUM ASSN., INC. *v.* ST. PAUL FIRE & MARINE INSURANCE CO. ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 549 N. W. 2d 617.

No. 96–620. SIMMS *v.* FIRST MADISON BANK, FSB. C. A. 5th Cir. Certiorari denied. Reported below: 83 F. 3d 1546.

No. 96–626. ADAMS ET AL. *v.* CSX TRANSPORTATION, INC. C. A. 9th Cir. Certiorari denied. Reported below: 80 F. 3d 1377.

No. 96–627. DAVIS *v.* O'BRIEN. App. Ct. Mass. Certiorari denied. Reported below: 40 Mass. App. 1118, 664 N. E. 2d 486.

No. 96–639. KISSI *v.* GREAT AMERICAN INSURANCE COS. Ct. Sp. App. Md. Certiorari denied.

No. 96–642. WAMBAUGH *v.* SMITH. C. A. 3d Cir. Certiorari denied. Reported below: 87 F. 3d 108.

No. 96–645. Subaru of America, Inc., et al. *v.* Compton. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 1513.

No. 96–666. Medico *v.* Sobolevitch, Court Administrator of Pennsylvania, et al. Sup. Ct. Pa. Certiorari denied.

No. 96–681. Greer et al. *v.* Kane, Judge, United States District Court for the District of Colorado. C. A. 10th Cir. Certiorari denied. Reported below: 85 F. 3d 489.

No. 96–696. Culp *v.* Hood et al. C. A. 6th Cir. Certiorari denied.

No. 96–715. African Union Methodist Protestant Church and Connection *v.* Mother African Union First Colored Methodist Protestant Church; Conference of African Union First Colored Methodist Protestant Church *v.* Mother African Union First Colored Methodist Protestant Church; and Conference of African Union First Colored Methodist Protestant Church et al. *v.* Mother African Union First Colored Methodist Protestant Church et al. Sup. Ct. Del. Certiorari denied. Reported below: 683 A. 2d 58 (first and third judgments); 687 A. 2d 194 (second judgment).

No. 96–718. Goetzman et ux. *v.* Agribank, FCB, fka Federal Land Bank of St. Paul, fka Farm Credit Bank of St. Paul. C. A. 8th Cir. Certiorari denied. Reported below: 91 F. 3d 1173.

No. 96–726. Humphreys *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 840.

No. 96–740. Watson et vir *v.* Isern. Sup. Ct. Tex. Certiorari denied. Reported below: 925 S. W. 2d 604.

No. 96–745. Anchors *v.* United States; and
No. 96–6650. Anderskow *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 88 F. 3d 245.

No. 96–760. Honn *v.* R. J. Steichen & Co. et al. Ct. App. Minn. Certiorari denied.

No. 96–765. Kallevig *v.* Internal Revenue Service. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 840.

No. 96–5615. Dinwiddie *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 76 F. 3d 913.

No. 96–5700. Parker *v.* Zant, Warden. Sup. Ct. Ga. Certiorari denied.

No. 96–5917. Barbee *v.* Electronic Data Systems Corp. C. A. 3d Cir. Certiorari denied.

No. 96–5959. Miranda *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 174.

No. 96–5961. Brown *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 544 Pa. 406, 676 A. 2d 1178.

No. 96–6064. Betancourt *v.* Arizona. Ct. App. Ariz. Certiorari denied.

No. 96–6124. Simpson *v.* Hession et al. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 96–6130. Mitchell *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 674 So. 2d 250.

No. 96–6221. Rachal *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 917 S. W. 2d 799.

No. 96–6325. Burton *v.* Christopher, Judge, 295th Judicial District Court, Harris County, Texas. Sup. Ct. Tex. Certiorari denied.

No. 96–6328. Reiman *v.* Wagstaff et al. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 96–6329. Cook *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 674 So. 2d 957.

No. 96–6345. Larzelere *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 676 So. 2d 394.

No. 96–6346. Nance *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 266 Ga. 816, 471 S. E. 2d 216.

No. 96–6347. Key *v.* Oakland Housing Authority et al. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 845.

No. 96–6349. January *v.* Texas et al. C. A. 5th Cir. Certiorari denied.

No. 96-6350. THOMPSON *v.* THOMPSON ET AL. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 96-6351. VANN *v.* OKLAHOMA DEPARTMENT OF HUMAN SERVICES. C. A. 10th Cir. Certiorari denied.

No. 96-6352. VANN *v.* OKLAHOMA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 91 F. 3d 160.

No. 96-6358. WALLACE *v.* MORRISON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 1271.

No. 96-6378. GLOCK *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 385.

No. 96-6383. GOLDEN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96-6386. GRIFFITH *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96-6389. HUMPHREY *v.* POTLATCH CORP. C. A. 8th Cir. Certiorari denied. Reported below: 74 F. 3d 1243.

No. 96-6438. ORIAKHI *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1151.

No. 96-6451. MARTIN *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 38 Conn. App. 731, 663 A. 2d 1078.

No. 96-6483. MURASKI *v.* THOMAS, GRIEVANCE ADMINISTRATOR, MICHIGAN ATTORNEY GRIEVANCE COMMISSION. Sup. Ct. Mich. Certiorari denied. Reported below: 451 Mich. 1203, 546 N. W. 2d 256.

No. 96-6490. WILLIAMS *v.* FERGUSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 96-6520. BRYANT *v.* BRYANT. App. Ct. Conn. Certiorari denied. Reported below: 40 Conn. App. 944, 672 A. 2d 977 and 978.

No. 96-6524. WILLIAMS ET AL. *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 85 F. 3d 635.

No. 96-6529. WHIPPLE *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 324 S. C. 43, 476 S. E. 2d 683.

No. 96-6530. HOLDEN *v.* BRIGGS, SUPERINTENDENT, COOK INLET PRETRIAL FACILITY. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 651.

No. 96-6551. TRAPP *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 423 Mass. 356, 668 N. E. 2d 327.

No. 96-6569. MCQUADE *v.* CITY OF KENT. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 153.

No. 96-6573. HARRIS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 96-6578. JOHNSON *v.* ROBBINSDALE INDEPENDENT SCHOOL DISTRICT 281 ET AL. C. A. 8th Cir. Certiorari denied.

No. 96-6581. LURIE *v.* CAESAR'S TAHOE, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 76 F. 3d 387.

No. 96-6601. SCHUMER *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 2d Cir. Certiorari denied.

No. 96-6612. THOMAS, AKA COLEMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 F. 3d 476.

No. 96-6627. HY THI NGUYEN *v.* DALTON, SECRETARY OF THE NAVY. C. A. 4th Cir. Certiorari denied. Reported below: 94 F. 3d 642.

No. 96-6633. FORT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 92 F. 3d 540.

No. 96-6654. ELTAYIB *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 88 F. 3d 157.

No. 96-6655. HARPER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 94 F. 3d 656.

No. 96-6656. CASTRO QUINTANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 97 F. 3d 782.

No. 96-6660. LAWSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 94 F. 3d 656.

No. 96-6664. LATTANZIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 88 F. 3d 21.

No. 96-6666. MIZELL, AKA WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 88 F. 3d 288.

No. 96-6672. REEDOM *v.* CITY OF FORT WORTH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 53.

No. 96-6674. HOLLAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1179.

No. 96-6675. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 96-6677. GRANADA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 91 F. 3d 146.

No. 96-6682. COWAN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 96 F. 3d 1439.

No. 96-6683. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 692.

No. 96-6685. MORALES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 89 F. 3d 824.

No. 96-6686. HOY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 94 F. 3d 645.

No. 96-6687. GOODMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 85 F. 3d 617.

No. 96-6702. DAVAGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 830.

No. 96-6704. REBOLLEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 140.

No. 96-6706. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 1149.

No. 96-6707. IGUADE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 93 F. 3d 986.

No. 96–6710. BEAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1441.

No. 96–6711. BORJESSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 954.

No. 96–6720. PEARSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 175.

No. 96–6722. SHANNON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1463.

No. 96–6727. PRINCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 94 F. 3d 643.

No. 96–6729. ADAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 91 F. 3d 114.

No. 96–6732. VOIGT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 89 F. 3d 1050.

No. 96–6734. TAITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 99 F. 3d 1153.

No. 96–6735. TIDAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1436.

No. 96–6743. BOJORQUEZ-GASTELUM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 94 F. 3d 656.

No. 96–6744. TAMAYO BARON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 1312.

No. 96–6746. BURRELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 96–6754. LABELLA-SZUBA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 92 F. 3d 136.

No. 96–6755. MORRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 98 F. 3d 1336.

No. 96–6760. GARTNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 93 F. 3d 633.

No. 96–6763. FLEMING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 94 F. 3d 642.

No. 96–6765. KLEIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 93 F. 3d 698.

No. 96–6767. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 99 F. 3d 1153.

No. 96–6769. OSORIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 91 F. 3d 161.

No. 96–6779. CALDWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 88 F. 3d 522.

No. 96–6785. KILAAB AL GHASHIYAH (KHAN) *v.* SMITH, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 101 F. 3d 110.

No. 96–591. VEREX ASSURANCE, INC. *v.* PALMA. C. A. 5th Cir. Motion of Mortgage Insurance Companies of America for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 79 F. 3d 1453.

No. 96–604. SPECIAL SCHOOL DISTRICT NO. 1 *v.* H. M. Ct. App. Minn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 96–6951 (A–428). HOKE *v.* NETHERLAND, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 92 F. 3d 1350.

Rehearing Denied

No. 95–1963. RUCKER *v.* CITICORP SAVINGS OF ILLINOIS, *ante*, p. 818;

No. 95–9246. SEDDENS *v.* JONES, WARDEN, *ante*, p. 846;

No. 95–9258. ARROYO JUSINO *v.* BROWN, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 846;

No. 96–150. SCHALL *v.* UNITED STATES POSTAL SERVICE, *ante*, p. 868;

No. 96–206. ONEY *v.* NENNIG, *ante*, p. 871;

No. 96–424. GARZA *v.* WEEKLEY, MAYOR, CITY OF SAN BENITO, *ante*, p. 950;

No. 96–5383. McDonald *v.* Inland Container Corp., *ante*, p. 895;

No. 96–5407. Brown *v.* American Express Travel Related Services Co., Inc., *ante*, p. 896;

No. 96–5569. McCullough *v.* Norris, Director, Arkansas Department of Correction, *ante*, p. 935;

No. 96–5592. Adams *v.* United States, *ante*, p. 904;

No. 96–5663. Tesciuba *v.* Koch, Former Mayor of City of New York, et al., *ante*, p. 952;

No. 96–5725. Johnson *v.* Brown et al., *ante*, p. 967;

No. 96–5740. Shelton *v.* Looker, *ante*, p. 937;

No. 96–5896. Schaffer *v.* Kirkland et al., *ante*, p. 982;

No. 96–5903. Scott *v.* Singletary, Secretary, Florida Department of Corrections, et al., *ante*, p. 971;

No. 96–5993. Johnson *v.* Griffin et al., *ante*, p. 971;

No. 96–6037. Turner *v.* Internal Revenue Service et al., *ante*, p. 996;

No. 96–6038. Turner *v.* Kuykendall, *ante*, p. 996;

No. 96–6091. Lindley et al. *v.* United States, *ante*, p. 956; and

No. 96–6207. Turner *v.* Merit Systems Protection Board, *ante*, p. 985. Petitions for rehearing denied.

No. 95–1682. Louisiana Legislative Black Caucus et al. *v.* Hays et al., 518 U. S. 1014. Petition for rehearing denied.

Justice Breyer, with whom Justice Stevens, Justice Souter, and Justice Ginsburg join, dissenting.

Because the appellants have convincingly shown that this case is not moot, I would grant the petition for rehearing.

No. 96–5115. Kirby *v.* Davis, Warden, et al., *ante*, p. 880. Motion for leave to file petition for rehearing denied.

December 17, 1996

Miscellaneous Order

No. A–424 (96–6867). O'Dell *v.* Netherland, Warden, et al. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to The Chief Justice, and by him referred to the Court, granted pending the disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the sending down of the judgment of this Court.

DECEMBER 19, 1996

Certiorari Granted

No. 96–6867 (A–424). O'DELL *v.* NETHERLAND, WARDEN, ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Questions 1 and 2 presented by the petition. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, January 30, 1997. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, February 27, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, March 12, 1997. This Court's Rule 29.2 does not apply. Reported below: 95 F. 3d 1214.

Statement of JUSTICE SCALIA respecting the grant of certiorari.

My vote was to deny the petition for certiorari in this case (and hence to deny the application for stay of execution), but I think it important to point out that the issue on which certiorari has been granted, and for which stay has been accorded, has nothing to do with O'Dell's claimed innocence of his crime. The Court has expressly limited its grant of review to Questions 1 and 2 of the petition for certiorari, which present the legal issue of whether our decision in *Simmons* v. *South Carolina*, 512 U. S. 154 (1994)—holding that a capital sentencing jury must in certain circumstances be instructed on the possibility of life imprisonment without parole as an alternative to a death sentence—has retroactive application to persons tried before *Simmons* was decided.

We have not granted certiorari on Question 3, the actual-innocence claim based upon newly available DNA evidence. That claim has been rejected by every one of the 13 Court of Appeals Judges who have heard this case, as well as by the District Court that originally considered the claim. 95 F. 3d 1214, 1246–1254 (CA4 1996) (en banc); *id.*, at 1255–1256 (Ervin, J., concurring in part and dissenting in part); *id.*, at 1218 (describing District Court decision). The unanimity of these 14 federal judges is unsurprising when the full story of the DNA evidence is told. While the DNA tests showed that blood stains on O'Dell's shirt did not come from the murder victim, Helen Schartner, they also showed that blood stains on his jacket *did* come from the victim—a conclusion consistent with the overwhelming evidence at trial that blood stains on numerous pieces of O'Dell's clothing came from her. *Id.*, at 1247–1248. Not one of the judges reviewing this evidence has been persuaded of O'Dell's innocence.

December 24, 1996

Miscellaneous Orders

No. 95–8736. Ogbomon *v.* United States. C. A. 11th Cir. [Certiorari granted, 518 U. S. 1056.] Motion of the Acting Solicitor General for divided argument granted, and time allotted for oral argument is as follows: 25 minutes for petitioner, 25 minutes for *amicus curiae*, and 10 minutes for the Acting Solicitor General. Counsel for petitioner and the *amicus curiae* appointed by this Court are directed to file responses to the suggestion of mootness filed by the Acting Solicitor General on December 20, 1996. The responses, prepared temporarily under Rule 33.2 of the Rules of this Court, are to be filed with the Clerk and served upon counsel on or before noon, Wednesday, January 8, 1997.

No. 96–126. Chandler et al. *v.* Miller, Governor of Georgia, et al. C. A. 11th Cir. [Certiorari granted, 518 U. S. 1057.] Motion of petitioners to permit American Civil Liberties Union et al. leave to participate in oral argument as *amici curiae* and for divided argument denied.

December 27, 1996

Miscellaneous Order

No. A–430 (96–958). Singletary, Secretary, Florida Department of Corrections *v.* Gwong. Sup. Ct. Fla. Application for stay, presented to Justice Kennedy, and by him referred to the Court, denied.

December 30, 1996

Miscellaneous Order

No. A–451. Colorado et al. *v.* Sanchez et al. C. A. 10th Cir. Application for stay, presented to Justice Breyer, and by him referred to the Court, denied.

JANUARY 3, 1997

Certiorari Granted

No. 96–651. GILBERT, PRESIDENT, EAST STROUDSBURG UNIVERSITY, ET AL. *v.* HOMAR. C. A. 3d Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, February 11, 1997. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 7, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, March 18, 1997. This Court's Rule 29.2 does not apply. Reported below: 89 F. 3d 1009.

No. 96–5955. RICHARDS *v.* WISCONSIN. Sup. Ct. Wis. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, February 11, 1997. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 7, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Tuesday, March 18, 1997. This Court's Rule 29.2 does not apply. Reported below: 201 Wis. 2d 845, 549 N. W. 2d 218.

JANUARY 6, 1997

Certiorari Granted—Reversed and Remanded. (See No. 95–1906, *ante*, p. 148.)

Certiorari Granted—Vacated and Remanded

No. 96–461. GOFFER *v.* WEST, SECRETARY OF THE ARMY. C. A. D. C. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position asserted by the Acting Solicitor General in his brief for the respondent filed November 25, 1996.

No. 96–629. CALDERON, WARDEN *v.* CASWELL. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *California* v. *Roy*, *ante*, p. 2. Reported below: 94 F. 3d 650.

No. 96–5926. HOOVER *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted.

Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position asserted by the Acting Solicitor General in his brief for the United States filed November 25, 1996. Reported below: 89 F. 3d 842.

Miscellaneous Orders

No. D–1734. In re Disbarment of Busby. Disbarment entered. [For earlier order herein, see *ante,* p. 924.]

No. D–1735. In re Disbarment of Kimes. Disbarment entered. [For earlier order herein, see *ante,* p. 924.]

No. D–1738. In re Disbarment of Brown. Disbarment entered. [For earlier order herein, see *ante,* p. 961.]

No. D–1739. In re Disbarment of McDaniels. Disbarment entered. [For earlier order herein, see *ante,* p. 961.]

No. D–1740. In re Disbarment of Cronin. Disbarment entered. [For earlier order herein, see *ante,* p. 961.]

No. D–1742. In re Disbarment of Goble. Disbarment entered. [For earlier order herein, see *ante,* p. 978.]

No. D–1761. In re Disbarment of Hallock. Marcy Miller Hallock, of Baltimore, Md., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–1762. In re Disbarment of Payne. Robert Embert Payne, Sr., of Upper Marlboro, Md., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–41. Fletcher *v.* United States;
No. M–42. Forman et al. *v.* IBEW Local Union No. 640 and Arizona Chapter NECA Pension Trust Fund et al.;
No. M–43. Rosen *v.* Board of Medical Examiners of Arizona;
No. M–46. Estrada Medrano *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division; and

No. M–47. POISSENOT ET AL. *v.* DALLAS COWBOYS FOOTBALL CLUB ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. M–44. ARIAS *v.* CALIFORNIA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 93–935. FREEMAN UNITED COAL MINING CO. *v.* JONES, WIDOW OF JONES, DECEASED, ET AL., 512 U. S. 1231. Motion of respondent Fairy Dell Jones for fees denied without prejudice to refiling in the United States Court of Appeals for the Seventh Circuit.

No. 96–270. AMCHEM PRODUCTS, INC., ET AL. *v.* WINDSOR ET AL. C. A. 3d Cir. [Certiorari granted, *ante,* p. 957.] Motion of respondents Aileen Cargile et al. to substitute parties granted. JUSTICE O'CONNOR took no part in the consideration or decision of this motion.

No. 96–6547. MCDONALD *v.* GEORGE MEANY CENTER FOR LABOR STUDIES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until January 27, 1997, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 96–6932. IN RE DELESPINE;
No. 96–6943. IN RE WINKLER; and
No. 96–6963. IN RE MINNIECHESKE. Petitions for writs of habeas corpus denied.

No. 96–6417. IN RE SHEEHY ET VIR; and
No. 96–6920. IN RE VALDES. Petitions for writs of mandamus denied.

Certiorari Denied

No. 95–9482. DOBSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 85 F. 3d 613.

No. 96–365. ARNOLD AND BAKER FARMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 85 F. 3d 1415.

No. 96–372. COUGHLIN, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. *v.* GRIFFIN. Ct. App.

N. Y. Certiorari denied. Reported below: 88 N. Y. 2d 674, 673 N. E. 2d 98.

No. 96–405. Kayne *v.* United States; and

No. 96–5794. Kalp *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 90 F. 3d 7.

No. 96–409. Drobny et ux. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 86 F. 3d 1174.

No. 96–415. Republican National Committee et al. *v.* Federal Election Commission. C. A. D. C. Cir. Certiorari denied. Reported below: 76 F. 3d 400.

No. 96–428. Weller *v.* Citation Oil & Gas Corp. et al. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 191.

No. 96–429. Michigan Education Assn.-NEA et al. *v.* Bromley et al. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 686.

No. 96–430. Marine Shale Processors, Inc. *v.* Environmental Protection Agency. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 1371.

No. 96–431. Blue Diamond Coal Co. *v.* Chater, Commissioner of Social Security, et al. C. A. 6th Cir. Certiorari denied. Reported below: 79 F. 3d 516.

No. 96–438. Boltach et al. *v.* Dexter Township. Ct. App. Mich. Certiorari denied.

No. 96–469. Electro-Voice, Inc. *v.* National Labor Relations Board. C. A. 7th Cir. Certiorari denied. Reported below: 83 F. 3d 1559.

No. 96–470. Starzenski et al. *v.* City of Elkhart et al. C. A. 7th Cir. Certiorari denied. Reported below: 87 F. 3d 872.

No. 96–486. Hartsel *v.* Keys, Mayor, City of Elyria, et al. C. A. 6th Cir. Certiorari denied. Reported below: 87 F. 3d 795.

No. 96–497. Charles Taylor Construction Co. et al. *v.* United States et al. C. A. D. C. Cir. Certiorari denied.

No. 96–498. HEIN ET UX. *v.* MCNEIL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 88 F. 3d 210.

No. 96–598. NORRIS *v.* GIMMEL, WEIMAN, SAVITZ & KRONTHAL, P. A., ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 107 Md. App. 747.

No. 96–618. CHAVEZ *v.* CITY OF ARVADA. C. A. 10th Cir. Certiorari denied. Reported below: 88 F. 3d 861.

No. 96–619. CENTRA, INC., ET AL. *v.* GARAVAGLIA. Ct. App. Mich. Certiorari denied. Reported below: 211 Mich. App. 625, 536 N. W. 2d 805.

No. 96–625. DOAN *v.* SEAGATE TECHNOLOGY, INC.; and FURR ET AL. *v.* SEAGATE TECHNOLOGY, INC. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 974 (first judgment) and 980 (second judgment).

No. 96–631. JOHNSON *v.* JUSTICES OF THE SUPREME COURT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–632. NORTH AVENUE NOVELTIES, INC. *v.* CITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 88 F. 3d 441.

No. 96–640. DAVIS *v.* HANOVER INSURANCE CO. App. Ct. Mass. Certiorari denied. Reported below: 40 Mass. App. 1127, 665 N. E. 2d 1040.

No. 96–644. FISCHBACH & MOORE, INC. *v.* PACIFIC GAS & ELECTRIC CO. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1154.

No. 96–647. DEPARTMENT OF REVENUE OF FLORIDA ET AL. *v.* SHARE INTERNATIONAL, INC. Sup. Ct. Fla. Certiorari denied. Reported below: 676 So. 2d 1362.

No. 96–648. EHREDT UNDERGROUND, INC. *v.* COMMONWEALTH EDISON CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 90 F. 3d 238.

No. 96–655. HANNAFORD BROS. CO. *v.* CIAMPI. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 681 A. 2d 4.

No. 96–656. NATIONAL ASSOCIATION OF HOME BUILDERS OF THE UNITED STATES ET AL. *v.* CHESTERFIELD COUNTY. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1180.

No. 96–657. MARTIN *v.* RIDGE, GOVERNOR OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1433.

No. 96–659. UBEL ET AL. *v.* MINNESOTA ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 547 N. W. 2d 366.

No. 96–661. MANTZ *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 96–662. BANK OF NEW YORK, AS COLLATERAL TRUSTEE, ET AL. *v.* CONTINENTAL AIRLINES, INC. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 553.

No. 96–665. ENERGY TRANSPORTATION CORP. *v.* GARNER. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 687.

No. 96–672. SCHULTE ROTH & ZABEL *v.* SOUTHMARK CORP. C. A. 5th Cir. Certiorari denied. Reported below: 88 F. 3d 311.

No. 96–673. HOLT *v.* J. L. PRESCOTT CO. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1319.

No. 96–674. BURFORD *v.* STEPTOE & JOHNSON. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1177.

No. 96–683. KAUBLE *v.* PENSION BENEFIT GUARANTY CORPORATION. C. A. 7th Cir. Certiorari denied. Reported below: 94 F. 3d 647.

No. 96–689. PIERCE *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 79 F. 3d 1159.

No. 96–695. TRUJILLO ET UX., AS NEXT FRIENDS AND GUARDIANS OF THEIR MINOR CHILD, TRUJILLO *v.* TAOS MUNICIPAL SCHOOLS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 91 F. 3d 160.

No. 96–700. KOKOSKA, BY HER GUARDIAN KOKOSKA *v.* BULLEN, COMMISSIONER, MASSACHUSETTS DIVISION OF MEDICAL ASSISTANCE. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 423 Mass. 399, 668 N. E. 2d 769.

No. 96–701. KEEM *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–704. Patterson et al. *v.* City of Lincoln. Sup. Ct. Neb. Certiorari denied. Reported below: 250 Neb. 382, 550 N. W. 2d 650.

No. 96–709. Kauble et al. *v.* Union Employee Discretionary Trust. C. A. 7th Cir. Certiorari denied.

No. 96–717. Conference of African Union First Colored Methodist Protestant Church *v.* Scotts African Union Methodist Protestant Church. C. A. 3d Cir. Certiorari denied. Reported below: 98 F. 3d 78.

No. 96–719. Patterson et al. *v.* District of Columbia et al. Ct. App. D. C. Certiorari denied. Reported below: 667 A. 2d 1338.

No. 96–724. Nationalist Movement *v.* City of Cumming. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1135.

No. 96–729. Bowden *v.* Public Building Commission of Chicago. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 276 Ill. App. 3d 1111, 697 N. E. 2d 10.

No. 96–735. Wright *v.* Carter, Attorney General of Indiana, et al. C. A. 7th Cir. Certiorari denied. Reported below: 95 F. 3d 1154.

No. 96–736. Rosado et al. *v.* Curtis et al. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 437.

No. 96–739. Lawson et al. *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 91 F. 3d 145.

No. 96–754. Jensen *v.* California Board of Psychology. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–759. Murray, dba America Speaks *v.* Cable National Broadcasting Co., dba America's Talking. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 858.

No. 96–767. Gray *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 96–780. Rude et al. *v.* United States; and

No. 96–6818. Mew *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 88 F. 3d 1538.

No. 96–788. Quijano et ux. *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 93 F. 3d 26.

No. 96–799. Kelsey-Hayes Co. *v.* Helwig et al. C. A. 6th Cir. Certiorari denied. Reported below: 93 F. 3d 243.

No. 96–805. Wall et al. *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 92 F. 3d 1444.

No. 96–809. Goulding *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 92 F. 3d 1187.

No. 96–811. Standard *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 430.

No. 96–813. Grable *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 98 F. 3d 251.

No. 96–824. Dixon *v.* Dixon. Sup. Ct. N. J. Certiorari denied. Reported below: 145 N. J. 370, 678 A. 2d 711.

No. 96–825. Perkins *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 127.

No. 96–837. Pike et ux. *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 88 F. 3d 54.

No. 96–839. Haun *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 90 F. 3d 1096.

No. 96–849. Lermer Germany GmbH et al. *v.* Lermer Corp. et al. C. A. Fed. Cir. Certiorari denied. Reported below: 94 F. 3d 1575.

No. 96–854. Ureta *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 44 M. J. 290.

No. 96–857. Oxfort *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 44 M. J. 337.

No. 96–862. Brown *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 95 F. 3d 1153.

No. 96–876. McGeeney *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 44 M. J. 418.

No. 96–880. GILL *v.* NEW YORK STATE BOARD OF LAW EXAMINERS. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 226 App. Div. 2d 462, 640 N. Y. S. 2d 805.

No. 96–894. BARRON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 1313.

No. 96–5136. DE LA MORA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 74 F. 3d 1247.

No. 96–5331. MORENO *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 84 F. 3d 1452.

No. 96–5400. BEAVERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 151.

No. 96–5659. WYATT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 1311.

No. 96–5727. MCCOSKEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 96–5971. CINDY R. ET AL. *v.* JAMES R. ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 41 Cal. App. 4th 1483, 49 Cal. Rptr. 2d 507.

No. 96–5976. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 140.

No. 96–5980. FLATTEN *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–6000. EZEOKE *v.* PRY ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–6005. PEARSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 435.

No. 96–6047. CANNADY *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 913 S. W. 2d 741.

No. 96–6061. ROSEBORO ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 87 F. 3d 642.

No. 96–6075. LEREBOURS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 87 F. 3d 582.

No. 96–6076. MENDEZ-ROSAS *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 672.

No. 96–6093. FIGUEROA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 37 F. 3d 637.

No. 96–6101. SARANCHAK *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 544 Pa. 158, 675 A. 2d 268.

No. 96–6120. BRASWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 830.

No. 96–6132. MUA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1462.

No. 96–6184. FLORES-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 156.

No. 96–6271. WILLIAMS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 345, 471 S. E. 2d 379.

No. 96–6284. MCWEE *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 322 S. C. 387, 472 S. E. 2d 235.

No. 96–6360. SNOW ET AL. *v.* HALFORD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 76 F. 3d 951.

No. 96–6364. SCOTT ET UX. *v.* MANILLA ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 87 N. Y. 2d 1055, 666 N. E. 2d 1061.

No. 96–6370. AMERSON *v.* IOWA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 94 F. 3d 510.

No. 96–6392. OSBAND *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 13 Cal. 4th 622, 919 P. 2d 640.

No. 96–6393. SHABAZZ *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 100 F. 3d 941.

No. 96–6399. SIMMS *v.* HARRISON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1152.

No. 96–6404. Mathews *v.* Maryland. Ct. Sp. App. Md. Certiorari denied. Reported below: 107 Md. App. 746.

No. 96–6406. Kyricopoulos *v.* Rollins et al. C. A. 1st Cir. Certiorari denied. Reported below: 89 F. 3d 823.

No. 96–6418. Schlicher *v.* Kansas. Ct. App. Kan. Certiorari denied. Reported below: 22 Kan. App. 2d xxviii, 912 P. 2d 779.

No. 96–6427. Cooper *v.* Malone et al. C. A. 8th Cir. Certiorari denied.

No. 96–6430. Lawson *v.* Moore, Attorney General of Mississippi, et al. C. A. 5th Cir. Certiorari denied.

No. 96–6431. Lowe *v.* Doe. C. A. 5th Cir. Certiorari denied.

No. 96–6435. Corthron *v.* Riley et al. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 140.

No. 96–6436. Adams *v.* Florida Department of Veterans Affairs et al. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 854.

No. 96–6439. Burgos *v.* Michigan. Recorder's Court, City of Detroit, Mich. Certiorari denied.

No. 96–6440. Cochran *v.* City of Norton, Ohio. C. A. 6th Cir. Certiorari denied. Reported below: 87 F. 3d 1315.

No. 96–6441. Cheshire *v.* Iowa. Ct. App. Iowa. Certiorari denied. Reported below: 548 N. W. 2d 198.

No. 96–6444. Bronson *v.* Walker et al. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1431.

No. 96–6445. Adesanya *v.* Prunty, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1317.

No. 96–6446. Cooper *v.* Tropicana Products. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 436.

No. 96–6452. Lee *v.* Missouri. Sup. Ct. Mo. Certiorari denied.

No. 96–6453. May *v.* Oregon. Ct. App. Ore. Certiorari denied. Reported below: 138 Ore. App. 704, 909 P. 2d 1250.

No. 96–6457. Martini *v.* New Jersey et al. Sup. Ct. N. J. Certiorari denied. Reported below: 144 N. J. 603, 677 A. 2d 1106.

No. 96–6459. Curiale *v.* Lowery, Governor of Washington, et al. C. A. 9th Cir. Certiorari denied.

No. 96–6460. Quate *v.* Oklahoma et al. Ct. Crim. App. Okla. Certiorari denied.

No. 96–6461. Redd *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 173 Ill. 2d 1, 670 N. E. 2d 583.

No. 96–6463. Richardson *v.* Quill. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 96–6468. Eline *v.* Frank et al. C. A. 9th Cir. Certiorari denied.

No. 96–6470. Ayer *v.* United States et al. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 141.

No. 96–6480. Dutcher *v.* Moreo et al. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 426.

No. 96–6484. Shown *v.* Spears, Warden, et al. Sup. Ct. Okla. Certiorari denied.

No. 96–6485. Reape *v.* New York Daily News. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 505.

No. 96–6493. Houghteling *v.* Houghteling. Sup. Ct. Mich. Certiorari denied. Reported below: 453 Mich. 876, 554 N. W. 2d 2.

No. 96–6499. Jaime Avena *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 13 Cal. 4th 394, 916 P. 2d 1000.

No. 96–6500. Ibrahim *v.* Roach et al. Ct. App. D. C. Certiorari denied.

No. 96–6502. Harris *v.* Gomez, Director, California Department of Corrections, et al. C. A. 9th Cir. Certiorari denied.

No. 96–6504. Stoianoff *v.* TRW, Inc., et al. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 222 App. Div. 2d 498, 635 N. Y. S. 2d 531.

No. 96–6507. HARRISON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–6514. IVY *v.* MILLER, SUPERINTENDENT, BOONVILLE CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 96–6516. JONES *v.* NORTH CAROLINA. Super. Ct. N. C., Wake County. Certiorari denied.

No. 96–6517. PARKER *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 96–6519. WILSON *v.* BOWERS, ATTORNEY GENERAL OF GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 95 F. 3d 59.

No. 96–6521. CRAVEN *v.* BI-LO, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 97 F. 3d 1451.

No. 96–6531. JAAKKOLA *v.* COUNTY OF ASHLAND, WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 200 Wis. 2d 493, 546 N. W. 2d 886.

No. 96–6534. HUNTLEY *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 681 A. 2d 10.

No. 96–6543. STADLER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 96–6544. HAYNES *v.* PATTERSON. Dist. Ct. App. Fla., 1st Dist. Certiorari denied.

No. 96–6546. FERGUSON *v.* DUNCIL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1178.

No. 96–6549. LANE *v.* RUSSELL, WARDEN, ET AL. Ct. App. Ohio, Warren County. Certiorari denied. Reported below: 109 Ohio App. 3d 470, 672 N. E. 2d 684.

No. 96–6554. MARSHALL *v.* KEMP ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 156.

No. 96–6557. COLE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 399, 471 S. E. 2d 362.

No. 96–6582. ALI, AKA PERKINS *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 1191.

No. 96–6607. Robinson *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 112 Nev. 1739.

No. 96–6610. White *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 96–6613. Protopappas *v.* Ratelle, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1158.

No. 96–6629. Simms *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 96–6639. Wilson *v.* Oregon. Sup. Ct. Ore. Certiorari denied. Reported below: 323 Ore. 498, 918 P. 2d 826.

No. 96–6640. Hildebrand *v.* Love, Superintendent, State Correctional Institution at Huntingdon. C. A. 3d Cir. Certiorari denied.

No. 96–6641. Thomas *v.* Deaconess Hospital, Inc. C. A. 7th Cir. Certiorari denied.

No. 96–6644. Hameed, aka York, et al. *v.* New York. Ct. App. N. Y. Certiorari denied. Reported below: 88 N. Y. 2d 232, 666 N. E. 2d 1339.

No. 96–6657. Ballew *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 76 Ohio St. 3d 244, 667 N. E. 2d 369.

No. 96–6679. Contreras *v.* Kincheloe, Superintendent, Spring Creek Correctional Center. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 650.

No. 96–6688. Wilson *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 96–6689. Williamson *v.* South Carolina et al. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 136.

No. 96–6690. Altschul *v.* Texas (three judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 96–6691. Altschul *v.* Texas Board of Pardons and Paroles. C. A. 5th Cir. Certiorari denied. Reported below: 101 F. 3d 698.

No. 96–6692. Altschul *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 96–6693. Altschul *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 96–6705. Barker *v.* Kernan, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 650.

No. 96–6712. Perryman *v.* Prado, Judge, United States District Court for the Western District of Texas. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1444.

No. 96–6718. Diaz *v.* Office of Personnel Management. C. A. Fed. Cir. Certiorari denied. Reported below: 91 F. 3d 165.

No. 96–6721. Dumbrique *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1159.

No. 96–6726. Pullen *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 368.

No. 96–6738. Smith *v.* Warnick et al. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1172.

No. 96–6742. Bentley *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 95 F. 3d 1161.

No. 96–6747. Watson *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1436.

No. 96–6748. Trautman *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1436.

No. 96–6750. Spencer *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 91 F. 3d 145.

No. 96–6751. Ysassi *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1160.

No. 96–6756. Meadows *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 654.

No. 96–6762. Franklin *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1443.

No. 96–6764. Juarez Godinez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1445.

No. 96–6766. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 94 F. 3d 642.

No. 96–6768. LEE *v.* NUTH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 97 F. 3d 1448.

No. 96–6770. ORDONOZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 654.

No. 96–6781. TEAGUE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 93 F. 3d 81.

No. 96–6783. THOMPSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–6784. HOCKENBERRY *v.* DETELLA, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 101 F. 3d 110.

No. 96–6790. POLLACK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1174.

No. 96–6792. FREDERICK *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 96–6797. BRONSON *v.* WALKER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1431.

No. 96–6798. ELICH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1435.

No. 96–6800. MURILLO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 99 F. 3d 1140.

No. 96–6801. OGBEIDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1441.

No. 96–6802. VELEZ *v.* PUERTO RICO. Cir. Ct. App. P. R. Certiorari denied.

No. 96–6803. WZOREK *v.* CITY OF CHICAGO. C. A. 7th Cir. Certiorari denied. Reported below: 86 F. 3d 1158.

No. 96–6805. GILL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1159.

No. 96–6807. KELLY *v.* UNITED STATES; and

No. 96–6893. KELLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 96 F. 3d 1455.

No. 96–6808. HARRIS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 95 F. 3d 42.

No. 96–6809. LOPEZ GARCIA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 91 F. 3d 145.

No. 96–6811. BAILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 94 F. 3d 642.

No. 96–6812. ARROYO-REYES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 93 F. 3d 17.

No. 96–6813. FOX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 135.

No. 96–6814. FASKEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 96–6820. O'BRIEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 836.

No. 96–6823. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 96 F. 3d 1457.

No. 96–6824. BAUER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 97 F. 3d 1467.

No. 96–6827. GIBBS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 99 F. 3d 1152.

No. 96–6828. REGAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1165.

No. 96–6829. MUJAHID, FKA GAFFNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 96 F. 3d 1439.

No. 96–6833. PARKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 135.

No. 96–6836. MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 46.

No. 96–6837. MCGRIER, AKA JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 135.

No. 96-6838. METLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 95 F. 3d 1153.

No. 96-6840. MOYA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 94 F. 3d 656.

No. 96-6842. DAVIS ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 90 F. 3d 302.

No. 96-6845. ORELLANA-OSORIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 1393.

No. 96-6846. ROA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 1394.

No. 96-6847. PARIES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1324.

No. 96-6850. EDGIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 92 F. 3d 1044.

No. 96-6851. HALL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1435.

No. 96-6852. GRANADA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 96-6853. ROGERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 94 F. 3d 643.

No. 96-6854. RANEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 96-6861. CRAWLEY *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 833.

No. 96-6865. ZELLMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 95 F. 3d 43.

No. 96-6866. ROTIBI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 95 F. 3d 58.

No. 96-6874. SADLER *v.* JABE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 96 F. 3d 1448.

No. 96-6875. SAIZ *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 923 P. 2d 197.

No. 96–6876. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 96 F. 3d 1456.

No. 96–6879. PAGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 854.

No. 96–6881. MCCOY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 96 F. 3d 1452.

No. 96–6885. GILLIAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 854.

No. 96–6888. ROBINSON *v.* UNITED STATES; and
No. 96–6889. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 95 F. 3d 1153.

No. 96–6890. REILLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 99 F. 3d 1148.

No. 96–6892. MAPLES *v.* UNITED STATES; and
No. 96–6895. MAPLES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 95 F. 3d 35.

No. 96–6894. KUBAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 94 F. 3d 971.

No. 96–6900. CARTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 91 F. 3d 162.

No. 96–6902. SILVA-DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 54.

No. 96–6903. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 96 F. 3d 1450.

No. 96–6909. RUSSELL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 96–6915. BEAVERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 95 F. 3d 1155.

No. 96–6917. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 95 F. 3d 500.

No. 96–6922. WHITE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 100 F. 3d 966.

No. 96–6923. ANDREWS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 357 and 92 F. 3d 1108.

No. 96–6940. ARLINE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 90 F. 3d 1394.

No. 96–330. OFFICIAL COMMITTEE OF TORT CLAIMANTS *v.* DOW CORNING CORP. ET AL.; and

No. 96–742. BREAST IMPLANT TORT CLAIMANTS REPRESENTED BY O'QUINN, KERENSKY, MCANINCH & LAMINACK *v.* DOW CORNING CORP. ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of these petitions. Reported below: 86 F. 3d 482.

No. 96–479. ADVANCED COMMUNICATIONS CORP. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Motions of Foundation for Educational Advancement Today and William Philip Welty for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 84 F. 3d 1452.

No. 96–833. IN RE HOOK C. A. 7th Cir. Petition for writ of certiorari, mandamus, and prohibition denied. Reported below: 89 F. 3d 350.

Rehearing Denied

No. 95–2025. CALIFORNIA ET AL. *v.* ROY, *ante,* p. 2;

No. 95–6347. GORDON *v.* PEORIA SCHOOL DISTRICT 150 ET AL., 516 U. S. 1030;

No. 95–8797. WILLIAMS *v.* LEWIS ET AL., *ante,* p. 828;

No. 95–9028. MURRELL *v.* UNIVERSITY OF SOUTH CAROLINA, *ante,* p. 835;

No. 95–9034. MCDUFF *v.* UNITED STATES, *ante,* p. 835;

No. 95–9089. LAUFMAN *v.* MAYER ET AL., *ante,* p. 837;

No. 95–9178. GUNNELL *v.* LITTLEFIELD, WARDEN, *ante,* p. 842;

No. 95–9382. IN RE HOPE, *ante,* p. 806;

No. 95–9495. COTTON *v.* HILBIG ET AL., *ante,* p. 860;

No. 96–185. SAKARIA ET AL. *v.* DARE COUNTY BOARD OF EDUCATION, *ante,* p. 976;

No. 96–338. KAHN *v.* BEICKER ENGINEERING, INC., ET AL., *ante,* p. 965;

No. 96–520. SMITH *v.* LOUISIANA-PACIFIC CORP. ET AL., *ante,* p. 982;

No. 96–5165. SHELTON *v.* GUDMANSON, WARDEN, *ante,* p. 883;

No. 96–5643. HUSSEIN *v.* RABAN SUPPLY CO., *ante,* p. 951;

No. 96–5696. BIGPOND *v.* CHAMPION, WARDEN, *ante,* p. 953;

No. 96–5840. EVANS *v.* UNITED STATES, *ante,* p. 940;

No. 96–5885. SINGLA ET AL. *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL., *ante,* p. 970;

No. 96–5911. CHEATHAM *v.* SCHNEIDER, GOVERNOR OF THE VIRGIN ISLANDS, ET AL., *ante,* p. 971;

No. 96–5933. JOHNSON *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, *ante,* p. 983;

No. 96–5963. RESETAR *v.* LYMAN, *ante,* p. 954;

No. 96–6013. TIERNEY *v.* PETERSON, SUPERINTENDENT, WASHINGTON CORRECTIONS CENTER, *ante,* p. 984;

No. 96–6049. LINDSEY *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL., *ante,* p. 997;

No. 96–6092. IN RE GAUNCE, *ante,* p. 980;

No. 96–6137. RUSSO *v.* BEYER, ASSISTANT COMMISSIONER, DIVISION OF OPERATIONS, NEW JERSEY DEPARTMENT OF CORRECTIONS, ET AL., *ante,* p. 984;

No. 96–6196. AGUILAR RILEY OZMEN *v.* NEW MEXICO, *ante,* p. 985;

No. 96–6226. BERKLEY *v.* DEPARTMENT OF THE ARMY, *ante,* p. 997; and

No. 96–6255. VAN HOORELBEKE *v.* UNITED STATES, *ante,* p. 985. Petitions for rehearing denied.

No. 95–1912. MATYASTIK *v.* TEXAS, *ante,* p. 815. Motion for leave to file petition for rehearing denied.

JANUARY 8, 1997

Miscellaneous Orders

No. A–485. WAINWRIGHT *v.* HUCKABEE, GOVERNOR OF ARKANSAS, ET AL. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied.

No. 96–7337 (A–477). IN RE RUIZ ET AL. Application for stay of execution of sentences of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

No. 96–7341 (A–479). IN RE WAINWRIGHT. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 96–7351 (A–481). WAINWRIGHT *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

No. 96–7352 (A–483). RUIZ ET AL. *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Application for stay of execution of sentences of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 104 F. 3d 163.

JANUARY 9, 1997

Miscellaneous Order

No. 96–7392 (A–490). IN RE WALDROP. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

JANUARY 10, 1997

Certiorari Dismissed

No. 95–8736. OGBOMON *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, 518 U. S. 1056.] Writ of certiorari dismissed as improvidently granted.

Certiorari Granted

No. 96–663. KLEHR ET UX. *v.* A. O. SMITH CORP. ET AL. C. A. 8th Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 21, 1997. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 21, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 7, 1997. This Court's Rule 29.2 does not apply. Reported below: 87 F. 3d 231.

No. 96–6133. BRACY *v.* GRAMLEY, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "Whether a habeas petitioner who was convicted of a capital offense and sentenced to death in a trial before a judge who admittedly accepted bribes in other contemporaneous criminal cases is entitled to discovery to support his claim that he was denied the right to a trial before an impartial judge?" Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 21, 1997. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 21, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 7, 1997. This Court's Rule 29.2 does not apply. Reported below: 81 F. 3d 684.

No. 96–6298. LINDH *v.* MURPHY, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 21, 1997. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 21, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, April 7, 1997. This Court's Rule 29.2 does not apply. Reported below: 96 F. 3d 856.

JANUARY 13, 1997

Miscellaneous Orders

No. D–1743. IN RE DISBARMENT OF HENDERSON. Disbarment entered. [For earlier order herein, see *ante*, p. 978.]

No. D–1746. IN RE DISBARMENT OF BRADY. Disbarment entered. [For earlier order herein, see *ante*, p. 990.]

No. D–1747. IN RE DISBARMENT OF POLISCHUK. Disbarment entered. [For earlier order herein, see *ante*, p. 990.]

No. D–1748. IN RE DISBARMENT OF D'AMBROSIO. Disbarment entered. [For earlier order herein, see *ante*, p. 990.]

No. D–1758. IN RE DISBARMENT OF MORRELL. Michael Xavier Morrell, of Washington, D. C., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on December 9, 1996 [*ante,* p. 1026], is discharged.

No. D–1763. In re Disbarment of Ellis. David Dale Ellis, of Houston, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1764. In re Disbarment of Mincey. Floyd Mincey, of Dublin, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1765. In re Disbarment of Fiore. Andrew J. Fiore, of Pleasantville, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1766. In re Disbarment of Pitt. Howard Pitt, of Greenwood Lake, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–48. Coleman *v.* Ford Motor Co., Inc., et al. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. M–49. In re Lyon. Motion to direct the Clerk to file common-law petition for writ of certiorari not in compliance with this Court's Rule 20.2 denied.

No. 96–110. Washington et al. *v.* Glucksberg et al. C. A. 9th Cir. [Certiorari granted, 518 U. S. 1057.] Motion of John Doe for leave to file a brief as *amicus curiae* denied.

No. 96–270. Amchem Products, Inc., et al. *v.* Windsor et al. C. A. 3d Cir. [Certiorari granted, *ante,* p. 957.] Motions of Washington Legal Foundation, Chamber of Commerce of the United States of America, and National Association of Securities and Commercial Lawyers for leave to file briefs as *amici curiae* granted. JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

No. 96–318. RICHARDSON ET AL. *v.* MCKNIGHT. C. A. 6th Cir. [Certiorari granted, *ante,* p. 1002.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 96–5268. GLOCK *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante,* p. 888. Respondent is invited to file a response to the motion for leave to file and petition for rehearing within 30 days.

No. 96–6936. O'CONNOR *v.* ARMY CLAIMS SERVICE. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 3, 1997, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 96–7021. IN RE YOUNG; and
No. 96–7078. IN RE KENNEDY. Petitions for writs of habeas corpus denied.

No. 96–6572. IN RE PRICE. Petition for writ of mandamus denied.

Certiorari Denied

No. 95–8502. TIDIK *v.* TIDIK. Ct. App. Mich. Certiorari denied.

No. 95–8867. KEMP *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 72 F. 3d 134.

No. 96–315. CROUCH *v.* UNITED STATES; and
No. 96–319. FRYE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 1497.

No. 96–374. SCHNEIDER NATIONAL CARRIERS, INC., ET AL. *v.* PYATT ET UX. C. A. 7th Cir. Certiorari denied. Reported below: 91 F. 3d 146.

No. 96–447. POPE *v.* POPE. Sup. Ct. Ill. Certiorari denied. Reported below: 167 Ill. 2d 568, 667 N. E. 2d 1062.

No. 96–525. JAMES MADISON LTD., BY HECHT, ASSIGNEE *v.* LUDWIG, COMPTROLLER OF THE CURRENCY, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 82 F. 3d 1085.

No. 96–532. APONTE-VELAZQUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 80 F. 3d 560.

No. 96–546. HINES *v.* ABB VETCO GRAY, INC. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 624.

No. 96–572. BAUGHER ET AL. *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 96–687. RUIZ *v.* BLENTECH CORP. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 320.

No. 96–691. YOUNIS BROS. & CO., INC., ET AL. *v.* CIGNA WORLDWIDE INSURANCE CO. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 13.

No. 96–694. BIC CORP. *v.* CARNEY ET UX. C. A. 8th Cir. Certiorari denied. Reported below: 88 F. 3d 629.

No. 96–698. DAUGHERTY *v.* SARASOTA COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1168.

No. 96–702. FAIRCLOTH ET AL. *v.* LUNDY PACKING CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 648.

No. 96–707. BOYETT, A MINOR CHILD, SUING BY HIS FATHER AND NEXT FRIEND, BOYETT *v.* TOMBERLIN ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 678 So. 2d 124.

No. 96–711. GINBERG *v.* TAUBER. Ct. App. D. C. Certiorari denied. Reported below: 678 A. 2d 543.

No. 96–716. GRYNBERG *v.* KLEIN ET AL. C. A. 10th Cir. Certiorari denied.

No. 96–730. ALDRICH ET AL. *v.* GENERAL PUBLIC UTILITIES CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 89 F. 3d 1106.

No. 96–750. JARRETT ET AL. *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 220 Ga. App. 559, 472 S. E. 2d 315.

No. 96–753. CHESTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 650.

No. 96–768. WINDLEY ET UX. *v.* CITY OF DOVER. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1437.

No. 96–769. MIRIN *v.* EYERLY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 122.

No. 96–784. VIVIANO WINE IMPORTERS, INC. *v.* BROWN-FORMAN CORP., DBA BROWN-FORMAN BEVERAGE CO., WINE DIVISION. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 837.

No. 96–832. BOARD OF COUNTY COMMISSIONERS OF CLEVELAND COUNTY, OKLAHOMA, ET AL. *v.* SHINAULT. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 367.

No. 96–835. BELL *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 91 F. 3d 166.

No. 96–864. CLARDY MANUFACTURING CO. *v.* MARINE MIDLAND BUSINESS LOANS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 88 F. 3d 347.

No. 96–878. LUTZ *v.* CORBETT, ATTORNEY GENERAL OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1171.

No. 96–898. PRICE *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 44 M. J. 430.

No. 96–926. NORDBERG ET UX. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 97 F. 3d 1445.

No. 96–941. DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 1194.

No. 96–5328. MORENO, AKA MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 595.

No. 96–5594. CALDER *v.* ARMSTRONG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1152.

No. 96–5958. ORTIZ *v.* UNITED STATES; and
No. 96–6384. YEPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1325.

No. 96–6110. Peterson *v.* Chater, Commissioner of Social Security. C. A. 9th Cir. Certiorari denied. Reported below: 81 F. 3d 169.

No. 96–6117. Loewe *v.* Rogers. C. A. 8th Cir. Certiorari denied.

No. 96–6223. Ajugwo *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 82 F. 3d 925.

No. 96–6225. Silvers *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 84 F. 3d 1317.

No. 96–6238. Neuton *v.* City National Bank (two judgments). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–6305. Orme *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 677 So. 2d 258.

No. 96–6306. Slaton *v.* Alabama. Sup. Ct. Ala. Certiorari denied. Reported below: 680 So. 2d 909.

No. 96–6416. Oken *v.* Maryland. Ct. App. Md. Certiorari denied. Reported below: 343 Md. 256, 681 A. 2d 30.

No. 96–6552. O'Guinn *v.* Dutton, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 88 F. 3d 1409.

No. 96–6559. Strong *v.* Glendening, Governor of Maryland, et al. C. A. 4th Cir. Certiorari denied. Reported below: 95 F. 3d 41.

No. 96–6560. Glendora *v.* Malone et al. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 1393.

No. 96–6568. Morton *v.* Bolden et al. C. A. 6th Cir. Certiorari denied.

No. 96–6571. Hunt *v.* North Carolina. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 828.

No. 96–6574. Patel *v.* Singer et al. Ct. App. Ind. Certiorari denied.

No. 96–6577. Marin *v.* Norton, Attorney General of Colorado, et al. C. A. 10th Cir. Certiorari denied. Reported below: 82 F. 3d 426.

No. 96–6579. Gibson *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 672 So. 2d 921.

No. 96–6586. Dooling *v.* Circuit Court of Illinois, Rock Island County. C. A. 7th Cir. Certiorari denied. Reported below: 92 F. 3d 1187.

No. 96–6587. Csoka *v.* United States et al. C. A. 7th Cir. Certiorari denied. Reported below: 94 F. 3d 647.

No. 96–6588. Henton *v.* Frederick. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 46.

No. 96–6589. Tumlin *v.* Goodyear Tire & Rubber Co. et al. Sup. Ct. Va. Certiorari denied.

No. 96–6590. Wightman *v.* Supreme Court of Texas et al. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 188.

No. 96–6591. Thompson *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. Sup. Ct. Tex. Certiorari denied.

No. 96–6593. Williams *v.* Cain, Warden, et al. C. A. 5th Cir. Certiorari denied.

No. 96–6595. Foster *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 96–6597. Kimble *v.* Montgomery County Police Department et al. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 150.

No. 96–6600. Miller *v.* Clinton, President of the United States. C. A. 9th Cir. Certiorari denied.

No. 96–6602. Swoyer *v.* Reed et al.; Swoyer *v.* Kercher et al.; Swoyer *v.* Merchant Bank et al.; and Swoyer *v.* Edgars et al. C. A. 3d Cir. Certiorari denied.

No. 96–6604. Crawford *v.* Bexar County Tax Office et al. C. A. 5th Cir. Certiorari denied.

No. 96–6605. Jackson *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 96–6611. Williams *v.* Washington. Ct. App. Wash. Certiorari denied. Reported below: 80 Wash. App. 1044.

No. 96–6617. Bast *v.* United States Court of Appeals for the Fourth Circuit. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 128.

No. 96–6619. Wilkerson *v.* Norgaard et al. C. A. 9th Cir. Certiorari denied.

No. 96–6621. Lennox *v.* Evans, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 87 F. 3d 431.

No. 96–6622. Kilo *v.* Dickenson et al. Sup. Ct. Fla. Certiorari denied. Reported below: 678 So. 2d 338.

No. 96–6624. Abdallah *v.* United Savings Bank et al. Ct. App. Cal., First App. Dist. Certiorari denied. Reported below: 43 Cal. App. 4th 1101, 51 Cal. Rptr. 2d 286.

No. 96–6631. George *v.* Pacific-CSC Work Furlough et al. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 1227.

No. 96–6636. Hershey *v.* Santa Clara Valley Humane Society et al. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1319.

No. 96–6637. Gillette *v.* Tansy, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 92 F. 3d 1196.

No. 96–6642. Montez Garcia *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied. Reported below: 84 F. 3d 431.

No. 96–6661. Campos Perez *v.* Immigration and Naturalization Service. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 51.

No. 96–6701. Slone *v.* Kentucky. Sup. Ct. Ky. Certiorari denied.

No. 96–6731. Champion *v.* Michigan. Sup. Ct. Mich. Certiorari denied. Reported below: 452 Mich. 92, 549 N. W. 2d 849.

No. 96–6774. Gregory C. *v.* Los Angeles County Department of Children's Services. Sup. Ct. Cal. Certiorari denied. Reported below: 13 Cal. 4th 952, 920 P. 2d 716.

No. 96–6786. Burton *v.* Burton. Sup. Ct. Del. Certiorari denied. Reported below: 683 A. 2d 58.

No. 96–6819. Pizzo *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 678 So. 2d 549.

No. 96–6843. Wesley *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 96 F. 3d 1456.

No. 96–6882. Martin *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 96–6884. Eriksen *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 86 F. 3d 1155.

No. 96–6897. Alvarez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 901.

No. 96–6901. Ahmed *v.* Montana. Sup. Ct. Mont. Certiorari denied. Reported below: 278 Mont. 200, 924 P. 2d 679.

No. 96–6924. Brooks *v.* Sheppard Air Force Base. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 1148.

No. 96–6928. Hughes et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 135.

No. 96–6930. Finch *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 96 F. 3d 1448.

No. 96–6933. Smith *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 94 F. 3d 649.

No. 96–6935. Santangelo *v.* Richardson, Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1322.

No. 96–6939. Boyd *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 449 Pa. Super. 716, 674 A. 2d 311.

No. 96–6945. Gifford *v.* Maine Department of Corrections. C. A. 1st Cir. Certiorari denied.

No. 96–6955. Price *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 95 F. 3d 723.

No. 96-6956. WALKENBACH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 96-6958. MOODY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 96-6961. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 95 F. 3d 58.

No. 96-6964. MCCRADY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 98 F. 3d 1342.

No. 96-6965. KARIM-PANAHI *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied.

No. 96-6970. MITCHELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 142.

No. 96-6971. CLARK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 692.

No. 96-6972. COLES *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 682 A. 2d 167.

No. 96-6973. FLEMING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 83 F. 3d 416.

No. 96-6975. DOWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 692.

No. 96-6979. RIDDICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 100 F. 3d 949.

No. 96-6980. RAMOS-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 369.

No. 96-6984. VIVAS-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 86 F. 3d 394.

No. 96-6985. KREUTZER *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 928 S. W. 2d 854.

No. 96-6986. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 695.

No. 96-7001. BANSHEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 91 F. 3d 99.

No. 96–7005. Turner *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 839.

No. 96–7006. Wright *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 96 F. 3d 1440.

No. 96–7012. Gutierrez-Hernandez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 582.

No. 96–7013. Dorsett *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 100 F. 3d 953.

No. 96–7014. Hanson *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 156.

No. 96–7015. Hampshire *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 95 F. 3d 999.

No. 96–7017. Gonzalez *v.* Hawley, Warden. C. A. 6th Cir. Certiorari denied.

No. 96–7024. King *v.* Jones. C. A. 11th Cir. Certiorari denied.

No. 96–7033. Eads *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 98 F. 3d 1339.

No. 96–7045. Brown et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 96 F. 3d 1439.

No. 96–506. Dutton, Warden *v.* O'Guinn. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 88 F. 3d 1409.

No. 96–705. Committee of Dental Amalgam Alloy Manufacturers and Distributors et al. *v.* Becker, Director, California Office of Environmental Health Hazard Assessment, et al. C. A. 9th Cir. Motion of petitioners to file Rule 29.6 statement under seal granted. Certiorari denied. Reported below: 92 F. 3d 807.

No. 96–712. Kaye, Individually and in His Capacity as Monmouth County Prosecutor, et al. *v.* Coleman. C. A. 3d Cir. Motion of New Jersey Association of Counties for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 87 F. 3d 1491.

Rehearing Denied

No. 95–938. IMMIGRATION AND NATURALIZATION SERVICE *v.* YUEH-SHAIO YANG, *ante,* p. 26;

No. 95–8942. SHOEMAKER *v.* CALIFORNIA ET AL., *ante,* p. 991;

No. 96–336. ELIASEN ET AL. *v.* ITEL CORP. ET AL., *ante,* p. 965;

No. 96–571. SMITH *v.* MAIL-WELL ENVELOPE CO. ET AL., *ante,* p. 994;

No. 96–630. PIERSON *v.* WILSHIRE TERRACE CORP., *ante,* p. 994;

No. 96–5086. DWORZANSKI *v.* DWORZANSKI, *ante,* p. 878;

No. 96–5272. TAYLOR *v.* MISSISSIPPI, *ante,* p. 994;

No. 96–5807. HILL *v.* CITY & STATE FACTORS, INC., *ante,* p. 969;

No. 96–5944. WESLEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL., *ante,* p. 983;

No. 96–6083. ROBINSON *v.* COURT OF COMMON PLEAS OF OHIO, CUYAHOGA COUNTY, *ante,* p. 997;

No. 96–6199. BROWN *v.* CONTRIBUTORY RETIREMENT APPEAL BOARD ET AL., *ante,* p. 1015;

No. 96–6242. JACKSON *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY, *ante,* p. 985; and

No. 96–6296. WILLIAMS *v.* VIRGINIA, *ante,* p. 998. Petitions for rehearing denied.

No. 96–5836. HOLLAR *v.* MYERS ET AL., *ante,* p. 969. Motion for leave to file petition for rehearing denied.

JANUARY 16, 1997

Miscellaneous Order. (For the Court's order adopting revisions to the Rules of this Court, see *post,* p. 1160.)

JANUARY 17, 1997

Certiorari Granted

No. 95–1918. ARKANSAS *v.* FARM CREDIT SERVICES OF CENTRAL ARKANSAS ET AL. C. A. 8th Cir. Certiorari granted. In addition to the questions presented by the petition, the parties are requested to brief and argue the following question: "Should the case have been dismissed by the District Court for lack of subject matter jurisdiction, in light of the Tax Injunction Act, 28 U. S. C. § 1341?" Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 28, 1997. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 28, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, April 9, 1997. This Court's Rule 29.2 does not apply. Reported below: 76 F. 3d 961.

No. 96–454. ASSOCIATES COMMERCIAL CORP. *v.* RASH ET UX. C. A. 5th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 28, 1997. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 28, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, April 9, 1997. This Court's Rule 29.2 does not apply. Reported below: 90 F. 3d 1036.

No. 96–552. AGOSTINI ET AL. *v.* FELTON ET AL.; and

No. 96–553. CHANCELLOR, BOARD OF EDUCATION OF THE CITY OF NEW YORK, ET AL. *v.* FELTON ET AL. C. A. 2d Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. In addition to the questions presented by these petitions, the parties are requested to brief and argue the following question: "Whether Rule 60(b) of the Federal Rules of Civil Procedure is a proper vehicle for obtaining the relief petitioner seeks?" Briefs of petitioners are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 28, 1997. Briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 28, 1997. Reply briefs, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, April 9, 1997. This Court's Rule 29.2 does not apply. Reported below: 101 F. 3d 1394.

No. 96–667. UNITED STATES *v.* HYDE. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 28, 1997. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 28, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, April 9, 1997. This Court's Rule 29.2 does not apply. Reported below: 92 F. 3d 779.

No. 96–842. UNITED STATES *v.* O'HAGAN. C. A. 8th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 28, 1997. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 28, 1997. A reply brief, if any, may be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, April 9, 1997. This Court's Rule 29.2 does not apply. Reported below: 92 F. 3d 612.

JANUARY 21, 1997

Certiorari Granted—Vacated and Remanded

No. 96–106. HESS ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR SOUTHEAST BANK, N. A., ET AL. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Atherton* v. *FDIC*, *ante*, p. 213. Reported below: 83 F. 3d 1317.

No. 96–548. UNITED STATES *v.* CROWDER ET AL. C. A. D. C. Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Old Chief* v. *United States*, *ante*, p. 172. Reported below: 87 F. 3d 1405.

Miscellaneous Orders

No. D–1730. IN RE DISBARMENT OF MEKLER. Disbarment entered. [For earlier order herein, see *ante*, p. 923.]

No. D–1745. IN RE DISBARMENT OF CROCKETT. Disbarment entered. [For earlier order herein, see *ante*, p. 978.]

No. D–1761. IN RE DISBARMENT OF HALLOCK. Marcy Miller Hallock, of Baltimore, Md., having requested to resign as a member of the Bar of this Court, it is ordered that her name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on January 6, 1997 [*ante*, p. 1053], is discharged.

No. D–1767. In re Disbarment of Donnellon. Jerome J. Donnellon, of Cincinnati, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–50. Flores *v.* United States;
No. M–51. Tinsley *v.* City of Indianapolis;
No. M–52. Cousins *v.* North Carolina Department of Corrections et al.;
No. M–53. Doyle *v.* United States; and
No. M–55. Williams *v.* City of Los Angeles. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. M–56. In re Jaques. Motion of petitioner to expedite consideration of petition for writ of certiorari denied. Motion to seal petition and other pleadings in this case denied.

No. 95–1340. Hughes Aircraft Co. *v.* United States ex rel. Schumer. C. A. 9th Cir. [Certiorari granted, *ante*, p. 926.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–1594. De Buono, New York Commissioner of Health, et al. *v.* NYSA–ILA Medical and Clinical Services Fund, by Its Trustees, Bowers et al. C. A. 2d Cir. [Certiorari granted, *ante*, p. 926.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 96–243. Suitum *v.* Tahoe Regional Planning Agency. C. A. 9th Cir. [Certiorari granted, *ante*, p. 926.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–2024. Lawyer *v.* Department of Justice et al. D. C. M. D. Fla. [Probable jurisdiction noted, *ante*, p. 926.] Motion of the Acting Solicitor General for divided argument granted.

No. 95–2074. City of Boerne *v.* Flores, Archbishop of San Antonio, et al. C. A. 5th Cir. [Certiorari granted, *ante*,

p. 926.] Motion of the Acting Solicitor General for divided argument granted. Motion of Ohio et al. for leave to participate in oral argument as *amici curiae,* for divided argument, and for additional time for oral argument granted to be divided as follows: petitioners, 20 minutes; respondents, 20 minutes; the Acting Solicitor General, 15 minutes; *amici curiae* Ohio et al., 15 minutes.

No. 96–79. BOGGS *v.* BOGGS ET AL. C. A. 5th Cir. [Certiorari granted, *ante,* p. 957.] Motion of Estate Planning Probate Law Section of State Bar of California for leave to file a brief as *amicus curiae* granted.

No. 96–272. METROPOLITAN STEVEDORE CO. *v.* RAMBO ET AL. C. A. 9th Cir. [Certiorari granted, *ante,* p. 1002.] Motions of National Association of Waterfront Employers et al. and National Steel & Shipbuilding Co. for leave to file briefs as *amici curiae* granted.

No. 96–491. INTER-MODAL RAIL EMPLOYEES ASSN. ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY CO. ET AL. C. A. 9th Cir. [Certiorari granted, *ante,* p. 1003.] Motion of petitioners to dispense with printing the joint appendix granted.

No. 96–542. MCMILLIAN *v.* MONROE COUNTY, ALABAMA. C. A. 11th Cir. [Certiorari granted, *ante,* p. 1025.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 96–679. PISCATAWAY TOWNSHIP BOARD OF EDUCATION *v.* TAXMAN. C. A. 3d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 96–5831. IN RE GAYDOS. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 59] denied.

No. 96–7122. IN RE TALAMANTES; and
No. 96–7136. IN RE MURRAY. Petitions for writs of habeas corpus denied.

No. 96–6728. IN RE STILES; and
No. 96–7098. IN RE GRIFFIN. Petitions for writs of mandamus and/or prohibition denied.

No. 96–777. IN RE MORETTI. Petition for writ of prohibition denied.

Certiorari Denied

No. 96–44. CMC Heartland Partners *v.* Union Pacific Railroad Co. C. A. 7th Cir. Certiorari denied. Reported below: 78 F. 3d 285.

No. 96–119. Zuill et al. *v.* Shanahan et al. C. A. 9th Cir. Certiorari denied. Reported below: 80 F. 3d 1366.

No. 96–334. Ranger Insurance Co. *v.* Louisiana. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 670 So. 2d 813.

No. 96–402. Lisa Lee Mines (Terrilynne Coal Co.) *v.* Director, Office of Workers' Compensation Programs, Department of Labor, et al. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1358.

No. 96–466. Stupak-Thrall et al. *v.* United States et al. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 1269.

No. 96–483. Lowery *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 91 F. 3d 161.

No. 96–559. Intervine Outdoor Advertising, Inc. *v.* Gloucester City Zoning Board of Adjustment et al. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 290 N. J. Super. 78, 674 A. 2d 1027.

No. 96–566. Webber *v.* Kansas. Sup. Ct. Kan. Certiorari denied. Reported below: 260 Kan. 263, 918 P. 2d 609.

No. 96–567. Virginia *v.* Browner, Administrator of Environmental Protection Agency, et al. C. A. 4th Cir. Certiorari denied. Reported below: 80 F. 3d 869.

No. 96–576. Daily News of Los Angeles, a Division of Cooke Media Group, Inc. *v.* National Labor Relations Board et al. C. A. D. C. Cir. Certiorari denied. Reported below: 73 F. 3d 406.

No. 96–578. Allemnore Community Hospital, dba Humana Hospital-Tacoma, et al. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 92 F. 3d 1206.

No. 96–582. Westboro Baptist Church, Inc. *v.* St. David's Episcopal Church. Ct. App. Kan. Certiorari denied. Reported below: 22 Kan. App. 2d 537, 921 P. 2d 821.

No. 96–590. SHERMAN *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 1134.

No. 96–597. HERNANDEZ *v.* RUNYON, POSTMASTER GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1200.

No. 96–601. RISSLER & MCMURRY CO. *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 917 P. 2d 1157.

No. 96–608. SAHNI *v.* AMERICAN DIVERSIFIED INVESTMENT CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 1054.

No. 96–622. O'NEILL *v.* CITY OF AUBURN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 685.

No. 96–660. LASSITER *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1151.

No. 96–675. GUILBEAU ET UX. *v.* W. W. HENRY CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 1149.

No. 96–714. UNITED STATES *v.* WEYERHAEUSER CO. AND SUBSIDIARIES. C. A. Fed. Cir. Certiorari denied. Reported below: 92 F. 3d 1148.

No. 96–720. KIENZLE *v.* ENGLEWOOD DISPOSAL CO., INC., ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 677 So. 2d 843.

No. 96–727. HOLMBERG *v.* CITY OF RAMSEY. Ct. App. Minn. Certiorari denied. Reported below: 548 N. W. 2d 302.

No. 96–731. SCHULTZ ET UX. *v.* CONSOLIDATION COAL CO. ET AL. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 197 W. Va. 375, 475 S. E. 2d 467.

No. 96–734. PATTERSON ET AL. *v.* P. H. P. HEALTHCARE CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 90 F. 3d 927.

No. 96–744. WEIBLE *v.* DOCTOR'S ASSOCIATES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 92 F. 3d 108.

No. 96–746. CANADIAN CONSULATE *v.* HOLDEN. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 918.

No. 96–748. Patel *v.* Scotland Memorial Hospital et al. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 132.

No. 96–749. Hardy *v.* Louisiana Department of Social Service et al. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 1149.

No. 96–751. Sciarrino *v.* City of Key West. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 364.

No. 96–755. House of Lloyd, Inc. *v.* Federal Insurance Co. C. A. 8th Cir. Certiorari denied. Reported below: 86 F. 3d 847.

No. 96–756. Broad *v.* Sealaska Corp. et al. C. A. 9th Cir. Certiorari denied. Reported below: 85 F. 3d 422.

No. 96–757. Ward *v.* City of Streetsboro et al. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 837.

No. 96–758. Taylor *v.* McLennan Community College et al. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 46.

No. 96–762. Russell *v.* City of Strongsville. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 96–764. Shaw Agency et al. *v.* Morstein. C. A. 11th Cir. Certiorari denied. Reported below: 93 F. 3d 715.

No. 96–771. Lane, Conservator of the Estate of Jamerson *v.* Landels, Ripley & Diamond et al. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 96–772. N. B., by her Mother and Next Friend, D. G. *v.* Alachua County School Board et al. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 1376.

No. 96–773. Helland *v.* South Bend Community School Corporation. C. A. 7th Cir. Certiorari denied. Reported below: 93 F. 3d 327.

No. 96–774. Gerth *v.* Sears, Roebuck & Co. C. A. 6th Cir. Certiorari denied. Reported below: 94 F. 3d 644.

No. 96–778. Williams Natural Gas Co. *v.* Kansas Pipeline Partnership. Ct. App. Kan. Certiorari denied. Reported below: 22 Kan. App. 2d 410, 916 P. 2d 76.

No. 96–783. HOLIDAY INNS, INC. *v.* 800 RESERVATION, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 86 F. 3d 619.

No. 96–793. BRIDGES *v.* CITY OF BOSSIER. C. A. 5th Cir. Certiorari denied. Reported below: 92 F. 3d 329.

No. 96–794. ROE *v.* MASKELL ET AL. Ct. App. Md. Certiorari denied. Reported below: 342 Md. 684, 679 A. 2d 1087.

No. 96–796. KOREAN AIR LINES CO., LTD. *v.* BICKEL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 96 F. 3d 151.

No. 96–797. HEARD *v.* CALL ET AL. Sup. Ct. Mo. Certiorari denied. Reported below: 925 S. W. 2d 840.

No. 96–807. PLESCHER *v.* WILLE, SHERIFF, PALM BEACH COUNTY SHERIFF'S OFFICE, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 855.

No. 96–819. SOIGNIER *v.* AMERICAN BOARD OF PLASTIC SURGERY. C. A. 7th Cir. Certiorari denied. Reported below: 92 F. 3d 547.

No. 96–888. ROCKY MOUNTAIN CONFERENCE OF THE UNITED METHODIST CHURCH *v.* WINKLER. Ct. App. Colo. Certiorari denied. Reported below: 923 P. 2d 152.

No. 96–890. FELTON ET AL. *v.* AGOSTINI ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 1394.

No. 96–901. RONWIN *v.* ALTMAN. C. A. 8th Cir. Certiorari denied. Reported below: 94 F. 3d 649.

No. 96–5017. HUNTER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 77 F. 3d 522.

No. 96–5949. TAYLOR *v.* UNITED STATES;
No. 96–6719. RICHARDS *v.* UNITED STATES; and
No. 96–6730. NELSON ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 92 F. 3d 1313.

No. 96–5996. MOORE *v.* ROBERTS, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 83 F. 3d 699.

No. 96-6032. CALL *v.* GOMEZ, COMMISSIONER OF HUMAN SERVICES, ET AL. Ct. App. Minn. Certiorari denied.

No. 96-6066. ROARK *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 418.

No. 96-6078. NUNLEY *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 923 S. W. 2d 911.

No. 96-6159. MODDERNO *v.* KING, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT. C. A. D. C. Cir. Certiorari denied. Reported below: 82 F. 3d 1059.

No. 96-6161. BRADY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 88 F. 3d 225.

No. 96-6205. WESTLEY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 83 F. 3d 714.

No. 96-6240. LEE *v.* FUJI BANK, LTD. C. A. 1st Cir. Certiorari denied.

No. 96-6264. THORNTON *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 835.

No. 96-6307. RANUM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 96 F. 3d 1020.

No. 96-6381. DANIELS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 86 F. 3d 1164.

No. 96-6403. O'BRIEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 96-6421. ESCOBEDO-MORENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 156.

No. 96-6442. GURS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 429.

No. 96-6615. CAVE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 1350.

No. 96–6645. Martinez *v.* Letica Corp. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 834.

No. 96–6649. Carlton *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 683 So. 2d 1067.

No. 96–6659. Scott *v.* Recession Hearing Official et al. C. A. 9th Cir. Certiorari denied.

No. 96–6668. Womble *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 667, 473 S. E. 2d 291.

No. 96–6676. Lowe *v.* Cantrell et al. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1442.

No. 96–6678. Stephen *v.* Prunty, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 155.

No. 96–6680. Ashton *v.* United States et al. C. A. 9th Cir. Certiorari denied. Reported below: 79 F. 3d 1152.

No. 96–6684. Bast *v.* Glasberg et al. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 128.

No. 96–6694. Baptiste *v.* New York. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 225 App. Div. 2d 359, 639 N. Y. S. 2d 22.

No. 96–6700. Allen *v.* Price, Warden, et al. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 45.

No. 96–6703. Samples *v.* Scott, Warden, et al. C. A. 11th Cir. Certiorari denied.

No. 96–6708. Miller *v.* Delaware River Port Authority. C. A. 3d Cir. Certiorari denied. Reported below: 82 F. 3d 405.

No. 96–6709. Awkal *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 76 Ohio St. 3d 324, 667 N. E. 2d 960.

No. 96–6723. Andrzejewski *v.* California Workers' Compensation Appeals Board et al. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 96–6725. Rivers *v.* Wood, Commissioner, Minnesota Department of Corrections. C. A. 8th Cir. Certiorari denied. Reported below: 92 F. 3d 1189.

No. 96–6733. Wayne, aka Fenney *v.* Benson, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 530.

No. 96–6736. Balawajder *v.* Scott, Executive Director, Texas Department of Criminal Justice, et al. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 141.

No. 96–6737. Wronke *v.* Canady. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 281 Ill. App. 3d 1150, 701 N. E. 2d 844.

No. 96–6739. Parker *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 917 P. 2d 980.

No. 96–6740. Lewis *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division, et al. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 45.

No. 96–6741. Reiman *v.* Brousse. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 96–6745. Crane *v.* Boothby. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 96–6771. Peterson *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 681 So. 2d 280.

No. 96–6772. Boyd *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 699, 473 S. E. 2d 327.

No. 96–6773. Foti *v.* United States District Court for the Northern District of California. C. A. 9th Cir. Certiorari denied.

No. 96–6777. Cooper *v.* Gammon, Superintendent, Moberly Correctional Center, et al. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 926 S. W. 2d 97.

No. 96–6778. Boney *v.* Scott, Executive Director, Texas Department of Criminal Justice, et al. C. A. 5th Cir. Certiorari denied. Reported below: 81 F. 3d 158.

No. 96–6782. Walker *v.* United States District Court for the District of New Jersey. C. A. 3d Cir. Certiorari denied.

No. 96–6787. STRUVE *v.* PARK PLACE APARTMENTS. Sup. Ct. Tex. Certiorari denied.

No. 96–6788. NICHOLAS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 140.

No. 96–6789. MCINTOSH *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 96–6793. BISHOP *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 518, 472 S. E. 2d 842.

No. 96–6794. BLANK *v.* HAWKESWORTH ET AL. Ct. App. Ky. Certiorari denied.

No. 96–6795. LAWAL *v.* BRIDGETOWN GRILL. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1171.

No. 96–6799. JONES *v.* ROBERTS, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 96–6804. ARTEAGA *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 96–6806. DENT *v.* WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1157.

No. 96–6815. CURIALE *v.* KNOWLES, GOVERNOR OF ALASKA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–6816. MEGRAVE *v.* SACRAMENTO COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–6821. PIOTEREK *v.* LABOR AND INDUSTRY REVIEW COMMISSION ET AL. Ct. App. Wis. Certiorari denied. Reported below: 201 Wis. 2d 810, 549 N. W. 2d 286.

No. 96–6831. SORTON *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–6832. COLLIGAN *v.* TRANS WORLD AIRLINES. C. A. 8th Cir. Certiorari denied.

No. 96–6844. Tucker Bey *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 91 F. 3d 169.

No. 96–6849. Bell *v.* Montana. Sup. Ct. Mont. Certiorari denied. Reported below: 277 Mont. 482, 923 P. 2d 524.

No. 96–6855. Strother *v.* White, Superintendent, State Correctional Institution at Pittsburgh, et al. C. A. 3d Cir. Certiorari denied.

No. 96–6857. Reberger *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 111 Nev. 1729, 916 P. 2d 212.

No. 96–6864. Brown *v.* Turpin, Warden. Sup. Ct. Ga. Certiorari denied.

No. 96–6877. Richardson *v.* Wood et al. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 1193.

No. 96–6878. Robinson *v.* South Carolina et al. C. A. 4th Cir. Certiorari denied. Reported below: 97 F. 3d 1448.

No. 96–6904. Penland *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 634, 472 S. E. 2d 734.

No. 96–6919. Turner *v.* Johnson, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1182.

No. 96–6938. Ball *v.* Brown, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 92 F. 3d 1203.

No. 96–6946. Goldberg *v.* Metro Dade County, Florida, Building and Zoning Department. C. A. 11th Cir. Certiorari denied. Reported below: 97 F. 3d 1468.

No. 96–6947. Amayo *v.* Paul Revere Insurance Group. C. A. 6th Cir. Certiorari denied. Reported below: 94 F. 3d 644.

No. 96–6960. DePiano *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 187 Ariz. 27, 926 P. 2d 494.

No. 96–6968. Smith *v.* Banks, Superintendent, Goldsboro Correctional Center. C. A. 4th Cir. Certiorari denied. Reported below: 97 F. 3d 1449.

No. 96–6976. Packer *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 96 F. 3d 1456.

No. 96–6987. McCoy *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 100 F. 3d 949.

No. 96–6997. Bryan et ux. *v.* Richardson, Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1317.

No. 96–7019. Layeni *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 90 F. 3d 514.

No. 96–7020. McMasters *v.* United States; and
No. 96–7039. Foley et al. *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 90 F. 3d 1394.

No. 96–7030. McKinnion *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 244.

No. 96–7034. Sage *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 92 F. 3d 101.

No. 96–7038. Altschul *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 96–7053. Gravely *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 135.

No. 96–7054. Davis *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 100 F. 3d 950.

No. 96–7055. Griffin *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 94 F. 3d 645.

No. 96–7056. Olson *v.* Fairfax-Falls Church Community Services Board. Sup. Ct. Va. Certiorari denied.

No. 96–7062. Wagner *v.* United States District Court for the District of Montana. C. A. 9th Cir. Certiorari denied.

No. 96–7064. Rafael *v.* United States; and
No. 96–7092. Gonzaga *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 98 F. 3d 1339.

No. 96–7066. Rashid *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 693.

No. 96–7068. KIDD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 98 F. 3d 1336.

No. 96–7071. ROWE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 928.

No. 96–7073. SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 100 F. 3d 969.

No. 96–7076. KESSELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 94 F. 3d 648.

No. 96–7077. MOORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 97 F. 3d 1453.

No. 96–7079. ANDERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 1306.

No. 96–7083. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 99 F. 3d 1135.

No. 96–7084. ASHER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 96 F. 3d 270.

No. 96–7085. BARNES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 94 F. 3d 438.

No. 96–7087. KELLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 97 F. 3d 1469.

No. 96–7090. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 97 F. 3d 1469.

No. 96–7094. DUDLESON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1183.

No. 96–7123. UNDERWOOD *v.* UNITED STATES; and
No. 96–7160. UNDERWOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 97 F. 3d 1453.

No. 96–7127. WOLFE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 92 F. 3d 1190.

No. 96–7128. WITHERSPOON *v.* BESHEARS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 98 F. 3d 1336.

No. 96–7131. WEAVER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 104 F. 3d 351.

No. 96–7135. NAVARRETTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1159.

No. 96–356. MOFFITT, ZWERLING & KEMLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 83 F. 3d 660.

No. 96–562. ORGANON, INC. *v.* KESSLER, COMMISSIONER OF FOOD AND DRUGS, ET AL.;

No. 96–575. BRACCO DIAGNOSTICS INC. ET AL. *v.* KESSLER, COMMISSIONER OF FOOD AND DRUGS, ET AL.;

No. 96–728. KESSLER, COMMISSIONER OF FOOD AND DRUGS, ET AL. *v.* ORGANON, INC., ET AL.; and

No. 96–761. GENERIC PHARMACEUTICAL INDUSTRY ASSN. *v.* BRACCO DIAGNOSTICS INC. ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 80 F. 3d 1543.

No. 96–685. CARLSON ET AL. *v.* ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION. Sup. Ct. Alaska. Motion of Tangier Sound Waterman's Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 919 P. 2d 1337.

No. 96–743. EMC CORP. *v.* NORAND CORP. C. A. Fed. Cir. Motion of New England Legal Foundation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 89 F. 3d 807.

No. 96–747. UNION OIL COMPANY OF CALIFORNIA *v.* CITIZENS FOR A BETTER ENVIRONMENT-CALIFORNIA ET AL. C. A. 9th Cir. Motion of American Automobile Manufacturers Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 83 F. 3d 1111.

No. 96–6665. JACOB *v.* AT&T CORPORATE HEADQUARTERS. C. A. 2d Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

Rehearing Denied

No. 95–9302. MCCARTHY *v.* UNITED STATES, *ante,* p. 991;

No. 96–202. URICHICH *v.* CITY OF YOUNGSTOWN ET AL., *ante,* p. 928;

No. 96–528. SMITH *v.* CITY AND COUNTY OF DENVER ET AL., *ante,* p. 1010;

No. 96–545. SMITH *v.* REGIONAL TRANSPORTATION DISTRICT ET AL., *ante*, p. 1021;

No. 96–5242. HAMILTON *v.* UNITED STATES, *ante*, p. 994;

No. 96–5520. MASSENGALE *v.* MILLS, WARDEN, *ante*, p. 934;

No. 96–5702. PARHAM *v.* PEPSICO, INC., *ante*, p. 953;

No. 96–5826. HAYNES *v.* SOUTH CAROLINA ET AL., *ante*, p. 939;

No. 96–5906. SORBET *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL., *ante*, p. 983;

No. 96–5978. FORT *v.* HAILEY ET AL., *ante*, p. 996;

No. 96–5985. BLANDINO *v.* LINDLER ET AL., *ante*, p. 996;

No. 96–6027. JOHNSON *v.* HILL, WARDEN, *ante*, p. 996;

No. 96–6090. PARTEE *v.* PASTRICK ET AL., *ante*, p. 1012;

No. 96–6129. YUAN JIN *v.* TEMPLE UNIVERSITY ET AL., *ante*, p. 1013;

No. 96–6165. PIZZO *v.* JEFFERSON PARISH SHERIFF'S OFFICE ET AL., *ante*, p. 1014;

No. 96–6190. SLAPPY *v.* VANMETER ET AL., *ante*, p. 1014; and

No. 96–6290. RAWLINS *v.* ALLEN, CLERK, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL., *ante*, p. 1016. Petitions for rehearing denied.

No. 95–9201. BIERLEY *v.* WALTERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MERCER, *ante*, p. 843;

No. 95–9396. BUZEA *v.* STANHOPE HOTEL, *ante*, p. 854; and

No. 96–232. DUBIN *v.* UNITED STATES, *ante*, p. 872. Motions for leave to file petitions for rehearing denied.

JANUARY 22, 1997

Certiorari Denied

No. 96–7214 (A–523). GREENAWALT *v.* ARIZONA. Super. Ct. Ariz., Yuma County. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied.

No. 96–7573 (A–520). GREENAWALT *v.* ARIZONA. Sup. Ct. Ariz. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied.

No. 96–7577 (A–521). GREENAWALT *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 105 F. 3d 1268.

JANUARY 23, 1997

Certiorari Denied

No. 96–7584 (A–524). GREENAWALT *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this application and this petition. Reported below: 105 F. 3d 1287.

JANUARY 28, 1997

Certiorari Denied

No. 96–7635 (A–535). SCHNEIDER *v.* MISSOURI. Sup. Ct. Mo. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

FEBRUARY 6, 1997

Certiorari Denied

No. 96–7691 (A–545). GEORGE *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 100 F. 3d 353.

FEBRUARY 7, 1997

Miscellaneous Order

No. 96–270. AMCHEM PRODUCTS, INC., ET AL. *v.* WINDSOR ET AL. C. A. 3d Cir. [Certiorari granted, *ante*, p. 957.] Motions of Douglas Laycock et al. and Asbestos Victims of America for leave to file briefs as *amici curiae* granted. Motion of respondents Aileen Cargile et al. for divided argument denied. JUSTICE O'CONNOR took no part in the consideration or decision of these motions.

FEBRUARY 18, 1997

Affirmed on Appeal

No. 96–669. DUPREE ET AL. *v.* MOORE, ATTORNEY GENERAL OF MISSISSIPPI, ET AL. Affirmed on appeal from D. C. S. D. Miss.

JUSTICE STEVENS and JUSTICE O'CONNOR would note probable jurisdiction.

Certiorari Granted—Reversed and Remanded. (See No. 96–713, *ante*, p. 355.)

Certiorari Granted—Vacated and Remanded

No. 96–603. GRIFFIN *v.* MEDTRONIC, INC. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Medtronic, Inc.* v. *Lohr*, 518 U. S. 470 (1996). Reported below: 82 F. 3d 79.

No. 96–964. AMERICAN LIFE & CASUALTY INSURANCE CO. *v.* TROSTEL ET AL. C. A. 8th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. No. 104–208, § 2609. Reported below: 92 F. 3d 736.

Miscellaneous Orders

No. D–1749. IN RE DISBARMENT OF KEATHLEY. Disbarment entered. [For earlier order herein, see *ante*, p. 1004.]

No. D–1768. IN RE DISBARMENT OF KAUFMAN. Robert Scott Kaufman, of Coral Gables, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1769. IN RE DISBARMENT OF DAVISON. Burns H. Davison II, of Des Moines, Iowa, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1770. IN RE DISBARMENT OF HENRY. James D. Henry, Jr., of St. Petersburg, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1771. IN RE DISBARMENT OF LYNN. Joseph M. Lynn, of San Francisco, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1772. In re Disbarment of Sturgis. Joseph B. Sturgis, of Wilmington, Del., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1773. In re Disbarment of Takacs. John G. Takacs, of Evesham Township, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1774. In re Disbarment of McDonald. Robert David McDonald, of Great Falls, Va., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1775. In re Disbarment of Weisman. Steven Neil Weisman, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1776. In re Disbarment of Hansen. Lewis R. Hansen, of West Valley City, Utah, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1777. In re Disbarment of Witchell. Barry A. Witchell, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1778. In re Disbarment of Rudd. Jeffrey D. Rudd, of Roanoke, Va., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–57. King *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division;

No. M–58. Quesada *v.* United States; and

No. M–59. Cornell *v.* Maass, Superintendent, Oregon State Penitentiary. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 95–1521. United States Department of State, Bureau of Consular Affairs, et al. *v.* Legal Assistance for Vietnamese Asylum Seekers, Inc., et al., *ante,* p. 1. Motion of respondents Legal Assistance for Vietnamese Asylum Seekers, Inc., et al. to be relieved from taxation of costs granted.

No. 96–454. Associates Commercial Corp. *v.* Rash et ux. C. A. 5th Cir. [Certiorari granted, *ante,* p. 1086.] Respondents' suggestion of mootness rejected.

No. 96–667. United States *v.* Hyde. C. A. 9th Cir. [Certiorari granted, *ante,* p. 1086.] Motion for appointment of counsel granted, and it is ordered that Jonathan D. Soglin, Esq., of Oakland, Cal., be appointed to serve as counsel for respondent in this case.

No. 96–776. Board of Education of the Enlarged City School District of the City of Watervliet, New York *v.* Russman, Child With Disabilities, by Her Parents, Russman et vir. C. A. 2d Cir. Motion of National School Boards Association for leave to file a brief as *amicus curiae* granted.

No. 96–827. Crawford-El *v.* Britton. C. A. D. C. Cir.; and

No. 96–896. Jefferson County, Alabama *v.* Acker et al. C. A. 11th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 96–5955. Richards *v.* Wisconsin. Sup. Ct. Wis. [Certiorari granted, *ante,* p. 1052.] Motion for appointment of counsel granted, and it is ordered that David R. Karpe, Esq., of Madison, Wis., be appointed to serve as counsel for petitioner in this case.

No. 96–6133. Bracy *v.* Gramley, Warden. C. A. 7th Cir. [Certiorari granted, *ante,* p. 1074.] Motion for appointment of counsel granted, and it is ordered that Gilbert H. Levy, Esq., of Seattle, Wash., be appointed to serve as counsel for petitioner in this case.

No. 96–7370. Wilson *v.* United States et al. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 11, 1997, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 96–7181. In re Pallett;
No. 96–7209. In re Brown;
No. 96–7315. In re Kukes;
No. 96–7345. In re Ramirez-Valadez;
No. 96–7433. In re Stearman;
No. 96–7498. In re Brewer;
No. 96–7537. In re Campbell;
No. 96–7567. In re Gallardo;
No. 96–7637. In re Ries;
No. 96–7661. In re Cotton; and
No. 96–7670. In re YoungBear. Petitions for writs of habeas corpus denied.

No. 96–7175. In re Barth;
No. 96–7309. In re Tamayo; and
No. 96–7539. In re Visintine. Petitions for writs of mandamus denied.

No. 96–7272. In re Simon. Petition for writ of mandamus and/or prohibition denied.

No. 96–541. In re Steffen, Chief Justice, Nevada Supreme Court, et al. Sup. Ct. Nev. Petition for writ of mandamus and/or prohibition and/or certiorari denied. Reported below: 112 Nev. 815, 920 P. 2d 489.

No. 96–829. In re Whitehead. Sup. Ct. Nev. Motion for leave to intervene in order to file petition for writ of mandamus and/or prohibition and/or certiorari denied. Petition for writ of mandamus and/or prohibition and/or certiorari denied. Reported below: 112 Nev. 815, 920 P. 2d 489.

Certiorari Granted

No. 96–871. State Oil Co. *v.* Khan et al. C. A. 7th Cir. Certiorari granted limited to Questions 1 and 2 presented by the petition. Reported below: 93 F. 3d 1358.

No. 96-7185. BATES *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 96 F. 3d 964.

Certiorari Denied. (See also Nos. 96-541 and 96-829, *supra.*)

No. 96-474. PACIFIC LUMBER CO. *v.* MARBLED MURRELET (BRACHYRAMPHUS MARMORATUS) ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 1060.

No. 96-504. LITTLE ET AL. *v.* BARRY, MAYOR OF THE DISTRICT OF COLUMBIA, ET AL. Ct. App. D. C. Certiorari denied. Reported below: 669 A. 2d 115.

No. 96-519. HAMPTON TREE FARMS, INC. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 82 F. 3d 1468.

No. 96-563. HARTLEY MARINE CORP. ET AL. *v.* PAIGE, TAX COMMISSIONER OF WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 196 W. Va. 669, 474 S. E. 2d 599.

No. 96-602. HAAS, PARENT AND NATURAL GUARDIAN OF GLENN *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 838.

No. 96-635. KIRCHGESSNER ET AL. *v.* WILENTZ ET AL.; and No. 96-790. PROBATION ASSOCIATION OF NEW JERSEY *v.* PORITZ ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1171.

No. 96-650. INTERCARGO INSURANCE CO., FKA INTERNATIONAL CARGO & SURETY CO. (SURETY FOR GENAUER) *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 83 F. 3d 391.

No. 96-676. DESARNO ET UX. *v.* ALLEGHENY COUNTY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 89 F. 3d 1123.

No. 96-678. BENNETT *v.* LAW FIRM OF JONES, WALDO, HOLBROOK & MCDONOUGH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1317.

No. 96-680. SKEEN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 86 F. 3d 1154.

No. 96-703. MERCHANT ET AL. *v.* LEVY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 92 F. 3d 51.

No. 96–706. BANKNOTE CORPORATION OF AMERICA, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 2d Cir. Certiorari denied. Reported below: 84 F. 3d 637.

No. 96–708. GREENE COUNTY BANK *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 8th Cir. Certiorari denied. Reported below: 92 F. 3d 633.

No. 96–721. DOE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 93 F. 3d 67.

No. 96–725. TRIDENT SEAFOODS CORP. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 855.

No. 96–737. JOHN LABATT LTD. ET AL. *v.* ANHEUSER-BUSCH, INC. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 1339.

No. 96–741. FLORIDA DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY *v.* DEPARTMENT OF LABOR. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 435 and 436.

No. 96–770. ACURA OF BELLEVUE ET AL. *v.* REICH, SECRETARY OF LABOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 90 F. 3d 1403.

No. 96–782. ESTATE OF COLE, BY ITS ADMINISTRATRIX, PARDUE, ET AL. *v.* BUTLER. C. A. 7th Cir. Certiorari denied. Reported below: 94 F. 3d 254.

No. 96–785. MOORE *v.* JACOBS. Ct. App. Miss. Certiorari denied. Reported below: 678 So. 2d 1017.

No. 96–786. UNITED STATES EX REL. VIRANI *v.* HALL & PHILLIPS; and

No. 96–787. JERRY M. LEWIS TRUCK PARTS & EQUIPMENT, INC., ET AL. *v.* HALL & PHILLIPS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 574.

No. 96–789. WSB ELECTRIC, INC., ET AL. *v.* CURRY, CALIFORNIA LABOR COMMISSIONER, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 88 F. 3d 788.

No. 96–791. DAVIS *v.* WONDERLAND GREYHOUND PARK, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 94 F. 3d 640.

No. 96–798. Edgewood Baptist Church, dba New Beginnings Adoption and Counseling Agency, et al. *v.* Cesnik et ux. C. A. 11th Cir. Certiorari denied. Reported below: 88 F. 3d 902.

No. 96–800. Kotam Electronics, Inc. *v.* JBL Consumer Products, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 93 F. 3d 724.

No. 96–801. Booth *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 96–802. National Super Markets, Inc. *v.* Varner; and No. 96–1026. Varner *v.* National Super Markets, Inc. C. A. 8th Cir. Certiorari denied. Reported below: 94 F. 3d 1209.

No. 96–803. Sitkoff et ux., Individually and as Parents and Natural Guardians of Sitkoff, a Minor, and as Administrators of the Estate of Sitkoff, Deceased *v.* BMW of North America, Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1172.

No. 96–804. New Valley Corp. *v.* New Valley Corporation Senior Executive Benefit Plan Participants et al. C. A. 3d Cir. Certiorari denied. Reported below: 89 F. 3d 143.

No. 96–808. Pennsylvania Nurses Assn. *v.* Pennsylvania State Education Assn. et al. C. A. 3d Cir. Certiorari denied. Reported below: 90 F. 3d 797.

No. 96–810. Ashley *v.* City of Huntsville et al. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 176.

No. 96–814. Rogers *v.* Overstreet et al. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 1329.

No. 96–816. Heady et ux., aka Heady Electric Co. *v.* Barclays Bank of New York. Ct. App. N. Y. Certiorari denied. Reported below: 87 N. Y. 2d 1008, 665 N. E. 2d 658.

No. 96–817. Tilton *v.* Capital Cities/ABC, Inc., et al. C. A. 10th Cir. Certiorari denied. Reported below: 95 F. 3d 32.

No. 96–818. Maceri et al. *v.* Cimmino et al. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1171.

No. 96–820. UITHOVEN *v.* WEST, SECRETARY OF THE ARMY. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1445.

No. 96–822. DODSON ET AL. *v.* HILLCREST SECURITIES CORP., INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 52.

No. 96–826. KATHERINE M., BY NEXT FRIEND, LESA T. *v.* FLOUR BLUFF INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 689.

No. 96–830. ABBOTT ET AL. *v.* PIPEFITTERS LOCAL UNION NO. 522 HOSPITAL, MEDICAL, AND LIFE BENEFIT PLAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 94 F. 3d 236.

No. 96–831. MAHERN, TRUSTEE, MERCHANTS GRAIN, INC. *v.* ADKINS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 93 F. 3d 1347.

No. 96–836. LYONS *v.* WILLIAMS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 1308.

No. 96–838. WALLER *v.* KENTUCKY BAR ASSN. Sup. Ct. Ky. Certiorari denied. Reported below: 929 S. W. 2d 181.

No. 96–840. TAFUTO *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 96–844. DUFF, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS *v.* GOVERNOR OF ILLINOIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 93 F. 3d 256.

No. 96–848. REINHARD ET AL. *v.* CHAPEL HILL-CARRBORO CITY BOARD OF EDUCATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 174.

No. 96–852. WITTMER ET AL. *v.* PETERS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 87 F. 3d 916.

No. 96–855. VAN ORT ET UX. *v.* ESTATE OF STANEWICH, DECEASED, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 831.

No. 96–861. BASINGER *v.* CSX TRANSPORTATION, INC. C. A. 6th Cir. Certiorari denied. Reported below: 91 F. 3d 143.

No. 96–865. Brown et al. *v.* Mendel. C. A. 11th Cir. Certiorari denied. Reported below: 84 F. 3d 393.

No. 96–866. Grey et al. *v.* Morris et al. C. A. 6th Cir. Certiorari denied. Reported below: 95 F. 3d 1152.

No. 96–867. Blytheville Compress Co., Inc., et al. *v.* Bankers Trust Co. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 292.

No. 96–869. Cobb et al. *v.* Burlington Northern Railroad Co., Inc. C. A. 11th Cir. Certiorari denied. Reported below: 96 F. 3d 1457.

No. 96–870. Campbell *v.* Quad City Times. Ct. App. Iowa. Certiorari denied. Reported below: 547 N. W. 2d 608.

No. 96–872. Oiness et al. *v.* Walgreen Co. et al. C. A. Fed. Cir. Certiorari denied. Reported below: 88 F. 3d 1025.

No. 96–875. Harris *v.* City of Hamtramck et al. Ct. App. Mich. Certiorari denied.

No. 96–877. Stitt *v.* CNG Transmission Corp. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1432.

No. 96–879. Soffer *v.* Board of Trustees of the City University of New York et al. C. A. 2d Cir. Certiorari denied.

No. 96–882. Lochman et ux. *v.* County of Charlevoix et al. C. A. 6th Cir. Certiorari denied. Reported below: 94 F. 3d 248.

No. 96–884. Takahashi *v.* Livingston Union School District et al. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 96–885. Saathoff et al. *v.* FileNet Corp. C. A. 10th Cir. Certiorari denied. Reported below: 89 F. 3d 851.

No. 96–886. Ernst & Young LLP *v.* Knapp et al. C. A. 9th Cir. Certiorari denied. Reported below: 90 F. 3d 1431.

No. 96–887. Wake County et al. *v.* Edward Valves, Inc. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 426, 471 S. E. 2d 342.

No. 96–892. Zdun *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–893. Sertich *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 95 F. 3d 520.

No. 96–897. Booker *v.* Ward et al. C. A. 7th Cir. Certiorari denied. Reported below: 94 F. 3d 1052.

No. 96–899. City of Philadelphia et al. *v.* Contractors Association of Eastern Pennsylvania, Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 586.

No. 96–902. Saelee *v.* Chater, Commissioner of Social Security. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 520.

No. 96–907. Tassa et al. *v.* Superior Court of California, County of Los Angeles (Ger-Dan International Telecom, Inc., Real Party in Interest). Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–909. Cherry *v.* Rocking Horse Ridge Estates Assn. et al. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1317.

No. 96–912. Gonzaba *v.* Texas. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 96–913. Camilli *v.* Industrial Commission of Arizona. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 1330.

No. 96–914. Minor *v.* Prudential Securities, Inc., et al. C. A. 7th Cir. Certiorari denied. Reported below: 94 F. 3d 1103.

No. 96–916. Lowery *v.* Redd et al. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 219.

No. 96–917. Rapid Return, Inc., et al. *v.* Pennsylvania et al. Ct. Common Pleas of Dauphin County, Pa. Certiorari denied.

No. 96–918. Ko Sai-Man et ux. *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 96 F. 3d 20.

No. 96–920. Frey *v.* Bank One, Indianapolis, N. A. C. A. 7th Cir. Certiorari denied. Reported below: 91 F. 3d 45.

No. 96–921. CRAWFORD *v.* NEWKIRK-STEWART ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 92 F. 3d 1185.

No. 96–923. LIN *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–925. MCKINNEY ET UX. *v.* BALDWIN. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 427.

No. 96–927. VISITING NURSE ASSOCIATION OF NORTH SHORE, INC., ET AL. *v.* BULLEN ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 93 F. 3d 997.

No. 96–929. YIN *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 864.

No. 96–932. NEAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 1148.

No. 96–933. SEEGER *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 653.

No. 96–934. RILEY, ADMINISTRATRIX OF THE ESTATE OF LOWE, DECEASED, ET AL. *v.* NEWTON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 94 F. 3d 632.

No. 96–935. MAKI ET AL. *v.* LAAKKO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 88 F. 3d 361.

No. 96–937. CROATIAN ROMAN CATHOLIC CONGREGATION OF THE HOLY TRINITY CHURCH ET AL. *v.* WUERL, BISHOP, ROMAN CATHOLIC DIOCESE OF PITTSBURGH. Super. Ct. Pa. Certiorari denied. Reported below: 447 Pa. Super. 208, 668 A. 2d 1151.

No. 96–938. HARRIS CUSTOM BUILDERS, INC. *v.* HOFFMEYER. C. A. 7th Cir. Certiorari denied. Reported below: 92 F. 3d 517.

No. 96–940. POLY ET UX. *v.* CARGILL, DBA CARGILL ASSOCIATES, ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 423 Mass. 141, 667 N. E. 2d 250.

No. 96–944. HAIRSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 96 F. 3d 102.

No. 96–947. DERAMUS, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF DERAMUS, DECEASED *v.* JACKSON NATIONAL LIFE INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 92 F. 3d 274.

No. 96–948. BLANCHARD ET AL. *v.* WILLIAMS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 98 F. 3d 1339.

No. 96–949. NEAL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 93 F. 3d 219.

No. 96–950. ORTIZ *v.* JOHN O. BUTLER CO. C. A. 7th Cir. Certiorari denied. Reported below: 94 F. 3d 1121.

No. 96–951. FIRSDON ET UX. *v.* INTERNAL REVENUE SERVICE. C. A. 6th Cir. Certiorari denied. Reported below: 95 F. 3d 444.

No. 96–952. ARCHULETA *v.* CITY OF FARMINGTON. Ct. App. N. M. Certiorari denied.

No. 96–953. SKRZYPCZAK *v.* KAUGER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 92 F. 3d 1050.

No. 96–955. AFANEH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 91 F. 3d 144.

No. 96–956. CITIZENS' UTILITY RATEPAYER BOARD *v.* KANSAS PIPELINE PARTNERSHIP. Ct. App. Kan. Certiorari denied. Reported below: 22 Kan. App. 2d 410, 916 P. 2d 76.

No. 96–960. WASZAK *v.* PASADENA CITY COLLEGE. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–961. TONNELLE AVENUE BOOKS & VIDEO, INC. *v.* TOWNSHIP OF NORTH BERGEN ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 96–963. GOINS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 46 M. J. 115.

No. 96–965. UNITED STATES EX REL. HOPPER *v.* ANTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 1261.

No. 96–966. MCNEMAR *v.* DISNEY STORES, INC. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 610.

No. 96–970. Erwin et al. *v.* Daley et al. C. A. 7th Cir. Certiorari denied. Reported below: 92 F. 3d 521.

No. 96–971. Berndt *v.* Wisconsin. Ct. App. Wis. Certiorari denied. Reported below: 204 Wis. 2d 108, 552 N. W. 2d 897.

No. 96–972. Mandrgoc *v.* Patapsco & Back Rivers Railroad Co. C. A. 4th Cir. Certiorari denied. Reported below: 94 F. 3d 641.

No. 96–973. Produce Place *v.* Department of Agriculture et al. C. A. D. C. Cir. Certiorari denied. Reported below: 91 F. 3d 173.

No. 96–975. Crosetto *v.* Wisconsin State Bar. C. A. 7th Cir. Certiorari denied. Reported below: 97 F. 3d 1454.

No. 96–977. South African Airways *v.* Brink's Ltd. C. A. 2d Cir. Certiorari denied. Reported below: 93 F. 3d 1022.

No. 96–980. Billmyer *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 99 F. 3d 1182.

No. 96–981. United Farmers Agents Assn., Inc., et al. *v.* Farmers Insurance Exchange et al. C. A. 5th Cir. Certiorari denied. Reported below: 89 F. 3d 233.

No. 96–982. Sokolow *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 91 F. 3d 396.

No. 96–983. Ulczycki, Executor of the Estate of Ulczycki, Deceased *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 839.

No. 96–984. Osinowo *v.* Comptroller of the City of New York. C. A. 2d Cir. Certiorari denied.

No. 96–988. Curd *v.* City of Searcy et al. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 840.

No. 96–993. Brown, Probate Judge for Jasper County, South Carolina *v.* South Carolina Board of Commissioners on Judicial Standards. Sup. Ct. S. C. Certiorari denied.

No. 96–996. Cox *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 45 M. J. 153.

No. 96–999. MARSHALL *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 45 M. J. 268.

No. 96–1000. PERRY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 45 M. J. 339.

No. 96–1001. SUMRALL *v.* UNITED STATES; LEE *v.* UNITED STATES; and BURROWS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 45 M. J. 207 (first judgment); 46 M. J. 123 (second judgment) and 124 (third judgment).

No. 96–1002. MCCARTY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 45 M. J. 334.

No. 96–1003. SEPE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 1461.

No. 96–1005. MONTVILLE *v.* LEWIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 87 F. 3d 900.

No. 96–1006. MOSES *v.* CITY OF EVANSTON. C. A. 7th Cir. Certiorari denied. Reported below: 97 F. 3d 1454.

No. 96–1008. GOLIA-PALADIN *v.* NORTH CAROLINA BAR. Sup. Ct. N. C. Certiorari denied. Reported below: 344 N. C. 142, 472 S. E. 2d 878.

No. 96–1011. HUNGERSCHAFER *v.* GATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 152.

No. 96–1012. CARR *v.* RUNYAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 327.

No. 96–1016. RUSSO *v.* MARUT. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1434.

No. 96–1019. SALAZAR *v.* MORALES, ATTORNEY GENERAL OF TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 100 F. 3d 952.

No. 96–1022. DANIELS *v.* LASSALLE, JUDGE, 19TH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, LOUISIANA; and

No. 96–1023. DANIELS *v.* LASSALLE, JUDGE, 19TH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: No. 96–1022, 673 So. 2d 736; No. 96–1023, 673 So. 2d 704.

No. 96–1025. MOORE *v.* BREWSTER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 96 F. 3d 1240.

No. 96–1029. LOCAL 100, SERVICE EMPLOYEES INTERNATIONAL UNION *v.* FOUNDATION INDUSTRIES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 99 F. 3d 1136.

No. 96–1030. ZANTOP INTERNATIONAL AIRLINES, INC. *v.* MICHIGAN DEPARTMENT OF TREASURY, REVENUE DIVISION. Ct. App. Mich. Certiorari denied.

No. 96–1031. CASTEEL *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 45 M. J. 379.

No. 96–1036. HOULIHAN ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 92 F. 3d 1271.

No. 96–1049. ELLIOTT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 1360.

No. 96–1050. ELLIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 90 F. 3d 447.

No. 96–1053. MOSES *v.* AMERICAN NONWOVENS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 97 F. 3d 446.

No. 96–1057. SMITH *v.* GRACE ET UX. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 919 S. W. 2d 673.

No. 96–1058. OLSEN *v.* DRUG ENFORCEMENT ADMINISTRATION. C. A. D. C. Cir. Certiorari denied. Reported below: 99 F. 3d 448.

No. 96–1062. ROBERTS *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 129 Idaho 194, 923 P. 2d 439.

No. 96–1064. VOMINH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 107 F. 3d 19.

No. 96–1068. CASTRO *v.* UNITED STATES; and
No. 96–7493. LUONGO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 1443.

No. 96–1071. LABRUNERIE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 91 F. 3d 1193.

No. 96–1073. MATTA-BALLESTEROS, AKA MATTA-LOPEZ *v.* UNITED STATES (three judgments). C. A. 9th Cir. Certiorari denied. Reported below: 73 F. 3d 371 (first judgment); 72 F. 3d 136 (second judgment); 71 F. 3d 754 and 98 F. 3d 1100 (third judgment).

No. 96–1076. HEITMAN, AKA WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 96–1081. AUBIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 87 F. 3d 141.

No. 96–1087. QURESHI ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied.

No. 96–1094. BOYLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1444.

No. 96–1095. BOLDEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 97 F. 3d 1454.

No. 96–1099. MASON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 82 F. 3d 418.

No. 96–1120. BULLOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 94 F. 3d 896.

No. 96–1154. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 693.

No. 96–5891. MCFARLAND *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 928 S. W. 2d 482.

No. 96–5999. FRITZ *v.* CHAMPION, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 66 F. 3d 338.

No. 96–6188. HILL *v.* JONES, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 1015.

No. 96–6394. COOK *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 544 Pa. 361, 676 A. 2d 639.

No. 96–6400. SPEIGHT *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 544 Pa. 451, 677 A. 2d 317.

No. 96–6405. KUHNS *v.* TEAM BANK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 91 F. 3d 140.

No. 96–6450. LANCASTER ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 96 F. 3d 734.

No. 96–6481. GILLIAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 86 F. 3d 1156.

No. 96–6580. LEWIS LANG *v.* REYNOLDS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 89 F. 3d 841.

No. 96–6585. TRAVIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 96–6609. WHITFIELD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 91 F. 3d 148.

No. 96–6620. DALAL *v.* KAISER PERMANENTE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1318.

No. 96–6638. WITTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 1148.

No. 96–6646. MOSKOVITS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 86 F. 3d 1303.

No. 96–6651. BOYLE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 93 F. 3d 180.

No. 96–6670. WILLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 53.

No. 96–6753. O'STEEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 74 F. 3d 1252.

No. 96–6761. HART/CROSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 89 F. 3d 833.

No. 96–6775. MCALISTER *v.* CITY OF WHEAT RIDGE. Dist. Ct. Colo., Jefferson County. Certiorari denied.

No. 96–6796. COLVIN *v.* MARYLAND. Cir. Ct. Anne Arundel County, Md. Certiorari denied.

No. 96–6826. ENGLAND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 96–6848. SIMMONS ET UX. *v.* CITY OF VACAVILLE ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 96-6856. SHORT *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96-6858. CORR *v.* GANNETT PACIFIC CORP. C. A. 9th Cir. Certiorari denied. Reported below: 85 F. 3d 634.

No. 96-6859. AREWA *v.* GEARINGER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 96-6862. FREEMAN *v.* YOUNG, EXECUTIVE DIRECTOR, ALABAMA BOARD OF PARDONS AND PAROLES, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1200.

No. 96-6863. BANKS *v.* THOMAS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 81 F. 3d 177.

No. 96-6870. HARRI *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 96-6871. PECK *v.* CHAFIN, JUDGE, CIRCUIT COURT OF WEST VIRGINIA, WAYNE COUNTY, ET AL. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 197 W. Va. 482, 475 S. E. 2d 858.

No. 96-6872. BARTHOLIC *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. Sup. Ct. Ariz. Certiorari denied.

No. 96-6873. BROWN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96-6880. FREDERICK *v.* EVANS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 92 F. 3d 1196.

No. 96-6883. JONES *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 95 F. 3d 1152.

No. 96-6886. HALL *v.* COUNTY OF LOS ANGELES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96-6896. MILLIGAN *v.* ERATH COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 52.

No. 96-6905. SPAIGHT *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 104 F. 3d 350.

No. 96–6906. SULLIVAN *v.* METROPOLITAN LIFE INSURANCE CO. C. A. 2d Cir. Certiorari denied. Reported below: 96 F. 3d 18.

No. 96–6910. QUINTANILLA *v.* CITY OF DOWNEY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 84 F. 3d 353.

No. 96–6911. ROBERT *v.* FERREIRA. C. A. 9th Cir. Certiorari denied. Reported below: 93 F. 3d 671.

No. 96–6913. TAPAR ET AL. *v.* COUNTY OF LOS ANGELES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–6916. CLAGETT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 252 Va. 79, 472 S. E. 2d 263.

No. 96–6918. VEALE *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 96–6926. FREY *v.* BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN SYSTEM ET AL. C. A. 7th Cir. Certiorari denied.

No. 96–6931. GLENDORA *v.* WALSH ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 227 App. Div. 2d 377, 642 N. Y. S. 2d 545.

No. 96–6934. STONE *v.* FARLEY, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 86 F. 3d 712.

No. 96–6937. PETERSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 681 So. 2d 280.

No. 96–6941. LAWSON *v.* FORDICE, GOVERNOR OF MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–6942. JONES *v.* MCGINNIS, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied.

No. 96–6944. DUBOIS *v.* NETHERLAND, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 96–6948. ARDELL *v.* STARK & STARK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1170.

No. 96–6950. Venson *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 678 So. 2d 342.

No. 96–6952. Brooks *v.* Boynton et al. C. A. 11th Cir. Certiorari denied. Reported below: 87 F. 3d 1331.

No. 96–6954. Bergmann *v.* Armstrong Law Offices. Ct. App. Wis. Certiorari denied.

No. 96–6957. Sweatt *v.* Campbell et al. C. A. 6th Cir. Certiorari denied.

No. 96–6959. Ames *v.* Kelly, Superintendent, Attica Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 96–6962. Mittleman *v.* Office of Personnel Management et al. C. A. D. C. Cir. Certiorari denied. Reported below: 76 F. 3d 1240.

No. 96–6969. Shoobs *v.* Zaveletta et al. Super. Ct. N. J., App. Div. Certiorari denied.

No. 96–6974. Higgins *v.* Dennis et al. C. A. 2d Cir. Certiorari denied.

No. 96–6977. Pope *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 679 So. 2d 710.

No. 96–6981. Peterson *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 96–6982. Turner *v.* Couch, Judge, District Court of Oklahoma, Cleveland County, et al. Ct. Crim. App. Okla. Certiorari denied.

No. 96–6983. VanDerBerg *v.* Singletary, Secretary, Florida Department of Corrections, et al. Sup. Ct. Fla. Certiorari denied. Reported below: 682 So. 2d 1101.

No. 96–6988. Light *v.* State Bar of California. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1320.

No. 96–6989. McHenry *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 96–6991. PALAND *v.* BROOKTRAILS COMMUNITY SERVICES DISTRICT BOARD OF DIRECTORS. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 96–6994. WYNNE *v.* WYNNE. Super. Ct. N. J., App. Div. Certiorari denied.

No. 96–6995. YOUNG *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 95 F. 3d 58.

No. 96–6996. BUSH *v.* HESSE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 78 F. 3d 592.

No. 96–6998. STEPHEN *v.* ROWLAND. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 140.

No. 96–6999. SCHLEEPER *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 96–7000. BANKS *v.* WITT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 83 F. 3d 426.

No. 96–7002. WILLIAMS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–7003. WILLIAMS *v.* PARKE, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 98 F. 3d 1344.

No. 96–7008. VALLES *v.* RUBALCABA ET AL. C. A. 5th Cir. Certiorari denied.

No. 96–7010. HERSHEY *v.* CALIFORNIA STATE HUMANE SOCIETY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1319.

No. 96–7016. HARRIS *v.* SAN DIEGO COUNTY DEPARTMENT OF SOCIAL SERVICES. Sup. Ct. Cal. Certiorari denied.

No. 96–7018. HASTINGS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 96–7025. MCGEE *v.* INGRAHAM ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–7026. Kilo *v.* Chiles, Governor of Florida, et al. C. A. 11th Cir. Certiorari denied.

No. 96–7029. Loss *v.* Attorney Grievance Commission et al. Sup. Ct. Mich. Certiorari denied.

No. 96–7031. Lowe *v.* Craft et al. C. A. 10th Cir. Certiorari denied.

No. 96–7032. Lemons *v.* Department of Social Services of Michigan. Ct. App. Mich. Certiorari denied.

No. 96–7035. Heon *v.* Vose et al. C. A. 1st Cir. Certiorari denied. Reported below: 86 F. 3d 1146.

No. 96–7036. Brown *v.* Kristianson et al. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1458.

No. 96–7037. Campbell *v.* Zolin, Director, California Department of Motor Vehicles, et al. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 96–7040. Maxberry *v.* Paramount Communications et al. C. A. 7th Cir. Certiorari denied.

No. 96–7042. Wooten *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 325 Ark. 510, 931 S. W. 2d 408.

No. 96–7043. Wagner *v.* Virginia Department of Corrections et al. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1184.

No. 96–7044. Tucker *v.* Coggins/Continental Granite Co., Inc. C. A. 11th Cir. Certiorari denied.

No. 96–7046. Bray *v.* Johnson, Director, Texas Department of Criminal Justice, Institutional Division. C. A. 5th Cir. Certiorari denied.

No. 96–7047. Fischer *v.* United Capital Corp. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 685.

No. 96–7048. Fischer *v.* Blackshear, Judge, United States District Court for the Southern District of New York. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 685.

No. 96–7057. SENIW *v.* PORTANOVA ET AL. C. A. 2d Cir. Certiorari denied.

No. 96–7058. SNIPES *v.* DETELLA, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 95 F. 3d 586.

No. 96–7059. DILLARD *v.* SECURITY PACIFIC CORPORATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 85 F. 3d 621.

No. 96–7061. LYKUS *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 423 Mass. 1012, 668 N. E. 2d 798.

No. 96–7065. VELEZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 96–7070. CUDJO *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 925 P. 2d 895.

No. 96–7072. RIDDICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 100 F. 3d 949.

No. 96–7075. MCGHEE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1445.

No. 96–7080. POOLE *v.* HOLLAND, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 96–7081. COPELAND *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 928 S. W. 2d 828.

No. 96–7086. JOHNSON *v.* SNYDER, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–7088. MCQUOWN *v.* DEPARTMENT OF THE ARMY. C. A. D. C. Cir. Certiorari denied.

No. 96–7091. GREULING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 54.

No. 96–7093. EKWEREKWU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 99 F. 3d 1134.

No. 96–7095. HARVIN *v.* STEPHENS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 91 F. 3d 143.

No. 96–7096. DeCastro *v.* Pataki Administration et al. C. A. 2d Cir. Certiorari denied.

No. 96–7097. Hightower *v.* Vose, Director, Rhode Island Department of Corrections, et al. C. A. 1st Cir. Certiorari denied. Reported below: 89 F. 3d 823.

No. 96–7099. Serito *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 102 F. 3d 554.

No. 96–7100. Bishop *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 97 F. 3d 1454.

No. 96–7101. MacInnes *v.* Borg, Warden. C. A. 9th Cir. Certiorari denied.

No. 96–7102. Lawrence *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 281 Ill. App. 3d 1129, 701 N. E. 2d 835.

No. 96–7104. Massey *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 1433.

No. 96–7105. LaRue *v.* Rolfs et al. C. A. 9th Cir. Certiorari denied.

No. 96–7107. Holtzclaw *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1441.

No. 96–7108. Glendora *v.* Hubbard et al. Ct. App. N. Y. Certiorari denied. Reported below: 89 N. Y. 2d 861, 675 N. E. 2d 1236.

No. 96–7109. Farr *v.* White, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 96–7110. Howard *v.* Hawley, Warden. C. A. 6th Cir. Certiorari denied.

No. 96–7111. Drennon *v.* Rodriguez et al. Sup. Ct. Idaho. Certiorari denied.

No. 96–7112. Grass *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–7113. Howell *v.* Booker, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 86 F. 3d 1166.

No. 96–7114. GARNER *v.* PENNINGTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 50.

No. 96–7115. SPIVEY *v.* LEWIS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 437.

No. 96–7116. PUSL *v.* PUSL. Ct. App. Ohio, Lake County. Certiorari denied.

No. 96–7117. CUPIDON *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 96 F. 3d 1438.

No. 96–7118. BERNYS *v.* WING ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 88 N. Y. 2d 1064, 674 N. E. 2d 337.

No. 96–7120. PICONE *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 96–7121. RUSHING *v.* VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 101 F. 3d 695.

No. 96–7124. TOWERY *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 186 Ariz. 168, 920 P. 2d 290.

No. 96–7125. TORRES *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 452 Mich. 43, 549 N. W. 2d 540.

No. 96–7126. WILLIAMS-DAVIS ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 90 F. 3d 490.

No. 96–7129. WHEELER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 100 F. 3d 949.

No. 96–7130. ZAYID *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 694.

No. 96–7132. ALEMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 281 Ill. App. 3d 991, 667 N. E. 2d 615.

No. 96–7133. BOONE *v.* TOMPKINS ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–7137. SOLANO CAMACHO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 92 F. 3d 1194.

No. 96–7138. Clontz *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 97 F. 3d 1449.

No. 96–7139. Hamm *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1183.

No. 96–7140. Dean *v.* Senkowski, Superintendent, Clinton Correctional Facility, et al. C. A. 2d Cir. Certiorari denied. Reported below: 93 F. 3d 58.

No. 96–7143. Campbell *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 99 F. 3d 1154.

No. 96–7144. Wolfgram *v.* State Bar of California et al. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 158.

No. 96–7145. Balog *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 448 Pa. Super. 480, 672 A. 2d 319.

No. 96–7146. Cecil *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 96 F. 3d 1344.

No. 96–7147. Aldridge *v.* Hill, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1458.

No. 96–7148. Restrepo *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 90 F. 3d 490.

No. 96–7149. Anderson *v.* Groose, Superintendent, Jefferson City Correctional Center. C. A. 8th Cir. Certiorari denied.

No. 96–7150. Ali *v.* Dugger. Ct. App. Tenn. Certiorari denied.

No. 96–7152. Cooper *v.* Missouri Parole Board et al. C. A. 8th Cir. Certiorari denied.

No. 96–7153. Bretzing *v.* Harvey et al. C. A. 11th Cir. Certiorari denied.

No. 96–7154. Register *v.* South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 323 S. C. 471, 476 S. E. 2d 153.

No. 96–7155. PRICE *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 683 A. 2d 60.

No. 96–7156. CLARKE *v.* MILLER, GOVERNOR OF GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–7157. MAYEUX *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 48.

No. 96–7158. RAMIREZ *v.* BELANGER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1442.

No. 96–7159. UNDERWOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 98 F. 3d 1343.

No. 96–7161. WILLIAMS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 100 F. 3d 949.

No. 96–7162. YOUNT *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 96–7164. BROWN *v.* STORY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 97 F. 3d 1464.

No. 96–7165. ATKINS *v.* GOORD, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 1393.

No. 96–7166. MOORE *v.* GROOSE ET AL. C. A. 8th Cir. Certiorari denied.

No. 96–7168. MADRID *v.* CAMBRA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 99 F. 3d 1146.

No. 96–7169. MORRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 99 F. 3d 1132.

No. 96–7170. JOHNSON *v.* UTAH. Ct. App. Utah. Certiorari denied.

No. 96–7172. SCOTT *v.* MAASS, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 96–7173. POPE *v.* JONES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1200.

No. 96–7174. HOLLAND *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–7176. BASCUE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1461.

No. 96–7177. DUCKETT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 919 P. 2d 7.

No. 96–7178. EVANS *v.* MCBRIDE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 94 F. 3d 1062.

No. 96–7179. MEEKS *v.* UNITED STATES;
No. 96–7223. BEST *v.* UNITED STATES;
No. 96–7226. BAUER *v.* UNITED STATES; and
No. 96–7303. TREIBER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 84 F. 3d 1549.

No. 96–7182. OLIVER *v.* WOOD, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 96 F. 3d 1106.

No. 96–7183. BATES *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 564, 473 S. E. 2d 269.

No. 96–7184. FISCHER *v.* UNITED CAPITAL CORP. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 685.

No. 96–7187. IBANEZ-FARIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 98 F. 3d 1354.

No. 96–7188. MCHENRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 97 F. 3d 125.

No. 96–7189. ELDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 90 F. 3d 1110.

No. 96–7191. KARIM-PANAHI *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied.

No. 96–7192. KHARRAT *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 152.

No. 96–7193. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 99 F. 3d 1154.

No. 96–7194. THROCKMORTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1069.

No. 96–7197. TERRELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 83 F. 3d 1466.

No. 96–7199. WEAVER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 96–7200. WESLEY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 107 F. 3d 924.

No. 96–7201. POHLMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 97 F. 3d 1465.

No. 96–7211. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 98 F. 3d 1353.

No. 96–7212. BLACK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 88 F. 3d 678.

No. 96–7213. ABDULLAH, AKA ROBERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 87 F. 3d 1310.

No. 96–7215. HAYES *v.* ROCHA, ACTING WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 89 F. 3d 845.

No. 96–7218. NAGI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 90 F. 3d 130.

No. 96–7220. ISRAEL-TREIBER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 84 F. 3d 1549.

No. 96–7221. MCMILLAN *v.* DEPARTMENT OF THE INTERIOR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1320.

No. 96–7222. CHAMBERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 102 F. 3d 549.

No. 96–7224. BOWDEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 99 F. 3d 1128.

No. 96–7225. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 99 F. 3d 1152.

No. 96–7229. SANDERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 97 F. 3d 856.

No. 96–7230. SALTER *v.* RICHARDSON, COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1444.

No. 96–7236. CLOIRD *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 96–7240. REID *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 98 F. 3d 1336.

No. 96–7242. MONTOYA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 87 F. 3d 621.

No. 96–7244. ALSTON *v.* GUILLORY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 81 F. 3d 148.

No. 96–7247. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1201.

No. 96–7250. HERRERA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 693.

No. 96–7251. FEINBERG *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 89 F. 3d 333.

No. 96–7252. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 100 F. 3d 952.

No. 96–7253. HORODNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 91 F. 3d 1317.

No. 96–7256. INDUISI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1168.

No. 96–7258. FLETCHER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1159.

No. 96–7259. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 94 F. 3d 204.

No. 96–7261. OLSEN *v.* FLORIDA. Cir. Ct. Pinellas County, Fla. Certiorari denied.

No. 96–7263. HERRON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 97 F. 3d 234.

No. 96–7266. MARTINEZ ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 83 F. 3d 371.

No. 96–7268. GIRARD *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 97 F. 3d 1445.

No. 96–7271. SAIF'ULLAH *v.* WILSON, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–7274. VILLALOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 100 F. 3d 952.

No. 96–7275. LOGAN ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 95 F. 3d 57.

No. 96–7277. JENKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 103 F. 3d 121.

No. 96–7279. YUSUFF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 96 F. 3d 982.

No. 96–7282. JENKINS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 278 Ill. App. 3d 1134, 699 N. E. 2d 607.

No. 96–7283. SHARRIEFF ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 98 F. 3d 1348.

No. 96–7284. PARKER *v.* UNITED STATES; and
No. 96–7396. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 97 F. 3d 142.

No. 96–7285. HABBEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 97 F. 3d 1465.

No. 96–7286. DEL MUNDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1461.

No. 96–7289. KINNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 99 F. 3d 1132.

No. 96–7292. AZUBUKO *v.* BOARD OF TRUSTEES, FRAMINGHAM STATE COLLEGE. C. A. 1st Cir. Certiorari denied. Reported below: 54 F. 3d 764.

No. 96–7295. BLAIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 98 F. 3d 647.

No. 96–7298. ROGERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 91 F. 3d 1388.

No. 96–7299. Stroman *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1184.

No. 96–7300. Vasquez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 105 F. 3d 654.

No. 96–7302. Young *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 99 F. 3d 1135.

No. 96–7305. Williams *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 95 F. 3d 1155.

No. 96–7311. Williams *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 97 F. 3d 1449.

No. 96–7312. Wright *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 98 F. 3d 1353.

No. 96–7314. Mitchell *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 98 F. 3d 1336.

No. 96–7316. Coble *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 96–7328. Deases *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 97 F. 3d 1465.

No. 96–7331. Shanks *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 97 F. 3d 977.

No. 96–7335. Perez *v.* United States; and
No. 96–7564. Trinidad *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 506.

No. 96–7336. Rivera-Flores *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 87 F. 3d 1325.

No. 96–7339. Barron *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 98 F. 3d 1338.

No. 96–7342. Sotelo *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 97 F. 3d 782.

No. 96–7343. Schwarz *v.* Clinton et al. C. A. D. C. Cir. Certiorari denied. Reported below: 104 F. 3d 1407.

No. 96–7354. Wanambisi *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 99 F. 3d 1135.

No. 96–7357. David *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 96 F. 3d 1477.

No. 96–7358. Graham *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 91 F. 3d 213.

No. 96–7360. Frank *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 100 F. 3d 952.

No. 96–7361. Finneran *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 95 F. 3d 58.

No. 96–7362. Harper *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 98 F. 3d 1348.

No. 96–7363. LaBayre *v.* Iowa. C. A. 8th Cir. Certiorari denied. Reported below: 97 F. 3d 1061.

No. 96–7364. Roberts *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 692.

No. 96–7365. Perkins *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 94 F. 3d 429.

No. 96–7366. Monclova *v.* Merit Systems Protection Board. C. A. Fed. Cir. Certiorari denied.

No. 96–7368. Valdez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 98 F. 3d 1348.

No. 96–7371. Walters *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 831.

No. 96–7372. Boyce *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 100 F. 3d 953.

No. 96–7373. Wrenn et al. *v.* Freeman, Secretary, North Carolina Department of Correction, et al. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1184.

No. 96–7374. Amiri *v.* United States Marshals Service. C. A. D. C. Cir. Certiorari denied.

No. 96–7375. Rothberg *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 98 F. 3d 1336.

No. 96–7376. Cherisson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 96 F. 3d 1439.

No. 96–7377. BAILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 91 F. 3d 162.

No. 96–7378. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 100 F. 3d 965.

No. 96–7379. PLAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 101 F. 3d 698.

No. 96–7381. SZYMANSKI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 98 F. 3d 1342.

No. 96–7383. VINCENT *v.* TENNESSEE ET AL. Ct. App. Tenn. Certiorari denied.

No. 96–7384. MOSES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 81 F. 3d 161.

No. 96–7387. ROMAS-MIRANDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 103 F. 3d 143.

No. 96–7390. LEYVA OSUNA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 98 F. 3d 1347.

No. 96–7393. KEEL *v.* NORTH CAROLINA. Super. Ct. N. C., Edgecombe County. Certiorari denied.

No. 96–7394. YOUNG YIL JO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 99 F. 3d 1147.

No. 96–7395. MORENO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 97 F. 3d 669.

No. 96–7399. HANNAH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1267.

No. 96–7400. SOLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 96–7406. CHRISTMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 98 F. 3d 1347.

No. 96–7407. STINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 97 F. 3d 466.

No. 96–7412. CORBIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–7413. SHAW *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1463.

No. 96–7415. CRAWFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 99 F. 3d 1140.

No. 96–7416. CREDIT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 362.

No. 96–7417. KILEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 88 F. 3d 21.

No. 96–7421. MAZA *v.* UNITED STATES; and
No. 96–7551. WALKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 93 F. 3d 1390.

No. 96–7425. KISSICK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 99 F. 3d 1151.

No. 96–7428. MONROE *v.* UNITED STATES MARSHALS SERVICE ET AL.; and MONROE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 101 F. 3d 706 (first judgment); 105 F. 3d 665 (second judgment).

No. 96–7429. NAHODIL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 693.

No. 96–7431. MONACO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 95 F. 3d 57.

No. 96–7432. LOPEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 693.

No. 96–7435. BOWMAN *v.* RUNYON, POSTMASTER GENERAL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 94 F. 3d 641.

No. 96–7438. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 506.

No. 96–7441. TIRICO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 103 F. 3d 115.

No. 96–7446. RUFFIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 102 F. 3d 551.

No. 96–7448. JUVENILE MALE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 98 F. 3d 1347.

No. 96–7449. JUVENILE MALE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 98 F. 3d 1347.

No. 96–7455. ZUCKERMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 96–7457. MINNICH *v.* DEUTCH, DIRECTOR OF CENTRAL INTELLIGENCE. C. A. 4th Cir. Certiorari denied. Reported below: 91 F. 3d 132.

No. 96–7458. HYUNG SU LEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 99 F. 3d 1147.

No. 96–7460. TAVARES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 506.

No. 96–7461. THOMPSEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 97 F. 3d 1562.

No. 96–7462. JOHNSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 107 F. 3d 923.

No. 96–7463. EVERARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 102 F. 3d 763.

No. 96–7464. GULATI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 693.

No. 96–7466. DIXON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 506.

No. 96–7467. DOMINGUEZ-ALVARADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1159.

No. 96–7471. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 103 F. 3d 121.

No. 96–7473. HARVEY *v.* PERRILL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 96–7474. WALKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 98 F. 3d 944.

No. 96–7477. VARGAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 96 F. 3d 1456.

No. 96–7479. TISOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 96 F. 3d 370.

No. 96–7484. GIVANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1198.

No. 96–7490. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 101 F. 3d 697.

No. 96–7494. REID *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 506.

No. 96–7496. CROFT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 98 F. 3d 1347.

No. 96–7499. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 100 F. 3d 970.

No. 96–7503. DENOYER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 96–7505. LABANSAT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 527.

No. 96–7509. ALMODOVAR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 100 F. 3d 948.

No. 96–7513. INDELICATO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 97 F. 3d 627.

No. 96–7515. SMALL *v.* PERRILL, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 98 F. 3d 1350.

No. 96–7516. MELEGRITO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 100 F. 3d 969.

No. 96–7517. JOHNSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 96–7519. BAKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1200.

No. 96–7520. BARRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 98 F. 3d 373.

No. 96–7521. DORVAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 104 F. 3d 369.

No. 96–7522. DENETCLAW *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 96 F. 3d 454.

No. 96–7531. STRICKLAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 89 F. 3d 830.

No. 96–7533. WITTMAN ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 99 F. 3d 1147.

No. 96–7541. ARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 101 F. 3d 698.

No. 96–7544. CAFFEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 102 F. 3d 549.

No. 96–7545. KIME *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 99 F. 3d 870.

No. 96–7546. LEAF, AKA LEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 104 F. 3d 370.

No. 96–7547. ROWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 100 F. 3d 949.

No. 96–7557. SRIYUTH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 98 F. 3d 739.

No. 96–7558. URIBE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 101 F. 3d 698.

No. 96–7559. TAYLOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 98 F. 3d 768.

No. 96–7560. YETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 101 F. 3d 698.

No. 96–7561. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 693.

No. 96–7569. GREER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 97 F. 3d 1465.

No. 96–7574. MEJIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 97 F. 3d 1391.

No. 96–7583. BALBOA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 101 F. 3d 692.

No. 96–7588. ACKLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 97 F. 3d 750.

No. 96–7591. FOSTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 99 F. 3d 1140.

No. 96–686. AMOCO ENERGY TRADING CORP. ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE O'CONNOR and JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 90 F. 3d 536.

No. 96–763. WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY *v.* RUPE. C. A. 9th Cir. Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 93 F. 3d 1434.

No. 96–775. TRAIL MOUNTAIN COAL CO. *v.* UTAH DIVISION OF STATE LANDS AND FORESTRY ET AL. Sup. Ct. Utah. Motion of National Mining Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 921 P. 2d 1365.

No. 96–891. JORDAN *v.* KENTON COUNTY BOARD OF EDUCATION ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed as a veteran granted. Certiorari denied. Reported below: 97 F. 3d 1452.

No. 96–911. LEWIS, FORMER DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* HANLON. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 92 F. 3d 1192.

No. 96–958. SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* GWONG. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 683 So. 2d 109.

No. 96–1065. STANTON *v.* DISTRICT OF COLUMBIA COURT OF APPEALS. C. A. D. C. Cir. Certiorari before judgment denied.

No. 96–1091. SAUNDERS *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari before judgment denied.

No. 96–7069. MCCOY *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 187 Ariz. 223, 928 P. 2d 647.

Rehearing Denied

No. 95–1891. ANDERSON *v.* JOHNSON, AKA DORTCH, *ante,* p. 814;

No. 95–9187. KRIVONAK *v.* BERKEY ET AL., *ante,* p. 842;

No. 95–9209. GRANDISON *v.* MARYLAND, *ante,* p. 1027;

No. 96–78. SPIEGEL *v.* STATE FARM FIRE & CASUALTY CO., *ante,* p. 865;

No. 96–620. SIMMS *v.* FIRST MADISON BANK, FSB, *ante,* p. 1041;

No. 96–627. DAVIS *v.* O'BRIEN, *ante,* p. 1041;

No. 96–640. DAVIS *v.* HANOVER INSURANCE CO., *ante,* p. 1056;

No. 96–645. SUBARU OF AMERICA, INC., ET AL. *v.* COMPTON, *ante,* p. 1042;

No. 96–5555. VISWANATHAN *v.* SCOTLAND COUNTY BOARD OF EDUCATION ET AL., *ante,* p. 1030;

No. 96–5908. JACKSON *v.* SOWA ET AL., *ante,* p. 983;

No. 96–5913. CREAMER *v.* LAIDLAW TRANSIT, INC., *ante,* p. 983;

No. 96–6189. IN RE GAYDOS, *ante,* p. 1006;

No. 96–6216. LITZENBERG *v.* MARYLAND ET AL., *ante,* p. 1015;

No. 96–6265. MARINOFF *v.* APPELLATE DIVISION, SUPREME COURT OF NEW YORK, FIRST JUDICIAL DEPARTMENT, ET AL., *ante,* p. 998;

No. 96–6270. WILLIAMS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante,* p. 1031;

No. 96–6292. AARON *v.* CUNNINGHAM ET AL., *ante,* p. 1031;

No. 96–6302. STEELE *v.* CITY OF LOS ANGELES ET AL., *ante,* p. 1016;

No. 96–6356. IN RE JOHNSON, *ante,* p. 1039;

No. 96–6434. WRONKE *v.* MADIGAN, SHERIFF, CHAMPAIGN COUNTY, ILLINOIS, *ante,* p. 1017;

No. 96–6536. MITCHELL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante,* p. 1032;

No. 96–6564. OWENS *v.* PRESBYTERIAN HOSPITAL, *ante,* p. 1033;

No. 96–6627. HY THI NGUYEN *v.* DALTON, SECRETARY OF THE NAVY, *ante,* p. 1045;

No. 96–6667. DARBY *v.* UNITED STATES, *ante,* p. 1034; and

No. 96–6681. IN RE NAGY, *ante,* p. 1027. Petitions for rehearing denied.

No. 95–1906. UNITED STATES *v.* WATTS; and UNITED STATES *v.* PUTRA, *ante*, p. 148. Motion of respondent Vernon Watts for leave to proceed further herein *in forma pauperis* granted. Petition for rehearing denied.

No. 96–5915. IN RE DANIK, *ante*, p. 980. Motion for leave to file petition for rehearing denied.

FEBRUARY 20, 1997

Dismissals Under Rule 46

No. 96–863. BINDANA INVESTMENTS CO. LTD. ET AL. *v.* KNEE DEEP CATTLE CO., INC., ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 94 F. 3d 514.

No. 96–7142. SMITH *v.* OFFICE OF CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES ET AL. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 97 F. 3d 950.

Miscellaneous Order

No. A–577. CALDERON, WARDEN *v.* MOORE. Application for stay, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted. Enforcement of the order of the United States District Court for the Central District of California, case No. CV 91–5976–KN, issued on March 31, 1995, is hereby stayed pending final disposition of the appeal by the United States Court of Appeals for the Ninth Circuit.

FEBRUARY 24, 1997

Certiorari Granted—Vacated and Remanded

No. 95–586. WISCONSIN ET AL. *v.* MUELLER ET AL. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44 (1996). Reported below: 54 F. 3d 438.

No. 95–1415. SABELKO ET AL. *v.* CITY OF PHOENIX ET AL. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Schenck* v. *Pro-Choice Network of Western N. Y.*, *ante*, p. 357. Reported below: 68 F. 3d 1169.

No. 95–1509. Luzik et al. *v.* Virginia et al. Sup. Ct. Va. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Auer* v. *Robbins, ante,* p. 452.

No. 95–1905. Hill et al. *v.* Colorado et al. Ct. App. Colo. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Schenck* v. *Pro-Choice Network of Western N. Y., ante,* p. 357. Reported below: 911 P. 2d 670.

No. 95–1981. Gnadt *v.* Castro et al. C. A. 4th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Robinson* v. *Shell Oil Co., ante,* p. 337. Reported below: 79 F. 3d 1141.

No. 95–2088. City and County of Denver *v.* Carpenter et al. C. A. 10th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Auer* v. *Robbins, ante,* p. 452. Reported below: 82 F. 3d 353.

No. 95–6825. Magnotti *v.* Singletary, Secretary, Florida Department of Corrections. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lynce* v. *Mathis, ante,* p. 433. Reported below: 67 F. 3d 314.

No. 96–152. Giuliani, Mayor of City of New York, et al. *v.* Yourman et al. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Auer* v. *Robbins, ante,* p. 452. Reported below: 84 F. 3d 655.

Miscellaneous Orders

No. D–1736. In re Disbarment of Du Bois. Disbarment entered. [For earlier order herein, see *ante,* p. 946.]

No. D–1741. In re Disbarment of Atkins. Disbarment entered. [For earlier order herein, see *ante,* p. 961.]

No. D–1744. In re Disbarment of Ebbert. Disbarment entered. [For earlier order herein, see *ante,* p. 978.]

No. D–1750. In re Disbarment of Jacobs. Disbarment entered. [For earlier order herein, see *ante,* p. 1004.]

No. D–1751. In re Disbarment of Principato. Disbarment entered. [For earlier order herein, see *ante*, p. 1004.]

No. D–1753. In re Disbarment of Barone. Disbarment entered. [For earlier order herein, see *ante*, p. 1004.]

No. D–1754. In re Disbarment of Nedell. Disbarment entered. [For earlier order herein, see *ante*, p. 1004.]

No. D–1755. In re Disbarment of Smotkin. Disbarment entered. [For earlier order herein, see *ante*, p. 1005.]

No. D–1757. In re Disbarment of Taffer. Disbarment entered. [For earlier order herein, see *ante*, p. 1026.]

No. D–1760. In re Disbarment of Gomric. Disbarment entered. [For earlier order herein, see *ante*, p. 1037.]

No. D–1779. In re Disbarment of Gregory. Milan Kenneth Gregory, of Northport, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1780. In re Disbarment of Mazzei. Rudolph L. Mazzei, of Port Jefferson, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1781. In re Disbarment of Hamilton. Donald D. Hamilton, of Lebanon, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1782. In re Disbarment of Olson. Oscar William Olson, Jr., of Oakbrook Terrace, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1783. In re Disbarment of Passman. David Louis Passman, of Chicago, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1784. In re Disbarment of Levinson. Richard Levinson, of Chicago, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1785. In re Disbarment of Muhammad. Mustafa Abdullah Muhammad, of Chicago, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–60. Reed *v.* Singletary, Secretary, Florida Department of Corrections. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 96–987. Foreman et al. *v.* Dallas County, Texas, et al. Appeal from D. C. N. D. Tex. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 96–1266. Antonio Perez *v.* United States. C. A. 2d Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

No. 96–7233. Bowers et al. *v.* Saturn General Motors Corp. C. A. 6th Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 17, 1997, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 96–7380. In re Sandles. Petition for writ of habeas corpus denied.

No. 96–6891. In re Sandles; and
No. 96–7475. In re Wesley. Petitions for writs of mandamus denied.

Certiorari Granted

No. 96–643. Steel Co., aka Chicago Steel & Pickling Co. *v.* Citizens for a Better Environment. C. A. 7th Cir. Certiorari granted. Reported below: 90 F. 3d 1237.

No. 96–792. Kalina *v.* Fletcher. C. A. 9th Cir. Certiorari granted. Reported below: 93 F. 3d 653.

No. 96–738. Salinas *v.* United States. C. A. 5th Cir. Certiorari granted limited to Questions 2 and 3 presented by the petition. Reported below: 89 F. 3d 1185.

No. 96–843. National Credit Union Administration *v.* First National Bank & Trust Co. et al.; and

No. 96–847. AT&T Family Federal Credit Union et al. *v.* First National Bank & Trust Co. et al. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 90 F. 3d 525.

Certiorari Denied

No. 95–1360. Webb et al., Co-Executors of the Estate of Parsons, Deceased *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 66 F. 3d 691.

No. 95–2060. Hadley *v.* North Arkansas Community Technical College. C. A. 8th Cir. Certiorari denied. Reported below: 76 F. 3d 1437.

No. 96–652. Kuchinskas et al. *v.* Broward County. C. A. 11th Cir. Certiorari denied. Reported below: 86 F. 3d 1168.

No. 96–806. Qasguargis *v.* Immigration and Naturalization Service. C. A. 6th Cir. Certiorari denied. Reported below: 91 F. 3d 788.

No. 96–821. Jonathan Woodner Co. et al. *v.* Breeden et al. Ct. App. D. C. Certiorari denied. Reported below: 665 A. 2d 929 and 681 A. 2d 1097.

No. 96–834. Jensen et ux. *v.* County of Los Angeles. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–841. UAP/GA AG Chem., Inc. et al. *v.* Childree. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1140.

No. 96–873. Tsimbidaros *v.* International Brotherhood of Painters and Allied Trades et al. C. A. 2d Cir. Certiorari denied. Reported below: 101 F. 3d 687.

No. 96–883. Parker, Individually and as Next Friend of Parker, et al. *v.* Boyer et al. C. A. 8th Cir. Certiorari denied. Reported below: 93 F. 3d 445.

No. 96–903. Arkansas Term Limits et al. *v.* Donovan; and No. 96–919. Arkansas *v.* Donovan et al. Sup. Ct. Ark. Certiorari denied. Reported below: 326 Ark. 353, 931 S. W. 2d 119.

No. 96–905. City of Tulsa *v.* Spradling et al. C. A. 10th Cir. Certiorari denied. Reported below: 95 F. 3d 1492.

No. 96–906. Lohman et al. *v.* Hafley. C. A. 8th Cir. Certiorari denied. Reported below: 90 F. 3d 264.

No. 96–931. Grantwood Village *v.* Missouri Pacific Railroad Co. et al. C. A. 8th Cir. Certiorari denied. Reported below: 95 F. 3d 654.

No. 96–946. Fordham *v.* Massachusetts Bar Counsel. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 423 Mass. 481, 668 N. E. 2d 816.

No. 96–990. Hudson et al. *v.* Delta Air Lines, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 90 F. 3d 451.

No. 96–991. Children's Healthcare Is a Legal Duty, Inc., et al. *v.* Montgomery, Attorney General of Ohio. C. A. 6th Cir. Certiorari denied. Reported below: 92 F. 3d 1412.

No. 96–992. Albino et al. *v.* Machado et al. Sup. Ct. Haw. Certiorari denied. Reported below: 81 Haw. 474, 918 P. 2d 1130.

No. 96–994. Brine et al. *v.* Iowa Board of Regents et al. C. A. 8th Cir. Certiorari denied. Reported below: 90 F. 3d 271.

No. 96–995. Chance Management, Inc., et al. *v.* South Dakota et al. C. A. 8th Cir. Certiorari denied. Reported below: 97 F. 3d 1107.

No. 96–997. Jonathan Woodner Co. et al. *v.* Breeden et al. Ct. App. D. C. Certiorari denied. Reported below: 681 A. 2d 1098.

No. 96–1010. Crossley *v.* Liberty Bank & Trust Co. et al. C. A. 8th Cir. Certiorari denied. Reported below: 73 F. 3d 366.

No. 96–1014. Union Underwear Co., Inc. *v.* Wilson. C. A. 1st Cir. Certiorari denied. Reported below: 96 F. 3d 552.

No. 96–1020. PLAINVIEW-OLD BETHPAGE CENTRAL SCHOOL DISTRICT ET AL. *v.* DONATO. C. A. 2d Cir. Certiorari denied. Reported below: 96 F. 3d 623.

No. 96–1021. ILLINOIS HIGH SCHOOL ASSN. *v.* GTE VANTAGE INC. C. A. 7th Cir. Certiorari denied. Reported below: 99 F. 3d 244.

No. 96–1035. BENDER SHIPBUILDING & REPAIR CO., INC. *v.* JARRELL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 681 So. 2d 1092.

No. 96–1039. REDGE *v.* MICHIGAN. Cir. Ct. Oakland County, Mich. Certiorari denied.

No. 96–1042. SIMMONS ET AL. *v.* SAFECO INSURANCE COMPANY OF AMERICA, INC. C. A. 11th Cir. Certiorari denied. Reported below: 92 F. 3d 1200.

No. 96–1045. GILL *v.* DALKON SHIELD CLAIMANTS TRUST. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 53.

No. 96–1077. ILLINOIS *v.* YARBER. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 279 Ill. App. 3d 519, 663 N. E. 2d 1131.

No. 96–1078. WILEY *v.* GENERAL MOTORS CORP. C. A. 5th Cir. Certiorari denied. Reported below: 100 F. 3d 953.

No. 96–1086. RANDALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 95 F. 3d 339.

No. 96–1088. GEISER *v.* MATHEW, PERSONAL REPRESENTATIVE OF THE ESTATE OF MATHEW, DECEASED, ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 96–1100. WARWICK MALL TRUST ET AL. *v.* RHODE ISLAND ET AL. Sup. Ct. R. I. Certiorari denied. Reported below: 684 A. 2d 252.

No. 96–1118. PIEVSKY *v.* RIDGE, GOVERNOR OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 98 F. 3d 730.

No. 96–1132. WILSON ET AL. *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 41 Mass. App. 1105, 670 N. E. 2d 211.

No. 96–1153. POLY-TECH INDUSTRIES, INC. *v.* INSTY*BIT, INC. C. A. 8th Cir. Certiorari denied. Reported below: 95 F. 3d 663.

No. 96–1159. CITY OF PITTSBURGH *v.* BECK. C. A. 3d Cir. Certiorari denied. Reported below: 89 F. 3d 966.

No. 96–1162. COCHRAN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 46 M. J. 173.

No. 96–1166. LARRY *v.* PHILLIPS, CHIEF JUSTICE, SUPREME COURT OF TEXAS, ET AL. Sup. Ct. Tex. Certiorari denied.

No. 96–1175. GABEL *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 98 F. 3d 1345.

No. 96–1191. HUGHES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 102 F. 3d 550.

No. 96–1196. DAMICO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 99 F. 3d 1431.

No. 96–1228. BIDDULPH ET AL. *v.* MORTHAM, SECRETARY OF STATE OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 89 F. 3d 1491.

No. 96–6614. ALEXANDER *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 1148.

No. 96–6791. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 93 F. 3d 126.

No. 96–6822. BECERRA *v.* DALTON, SECRETARY OF THE NAVY. C. A. 4th Cir. Certiorari denied. Reported below: 94 F. 3d 145.

No. 96–6830. ROWSEY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 343 N. C. 603, 472 S. E. 2d 903.

No. 96–6868. BURGOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 94 F. 3d 849.

No. 96–6966. CHARLTON *v.* PARAMUS BOARD OF EDUCATION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1431.

No. 96–7134. McGILL *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 545 Pa. 180, 680 A. 2d 1131.

No. 96–7163. CARTER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 96–7180. JONES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 678 So. 2d 309.

No. 96–7190. MILLER *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 186 Ariz. 314, 921 P. 2d 1151.

No. 96–7198. TAYLOR *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 929 S. W. 2d 209.

No. 96–7202. WELLS *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–7203. YORK *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 326 Ark. xxxi.

No. 96–7204. WHITE *v.* ADAMS COUNTY DETENTION FACILITY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 94 F. 3d 657.

No. 96–7205. BURNETT *v.* BULSON; and BURNETT *v.* RIGGLE ET AL. Ct. App. Mich. Certiorari denied.

No. 96–7206. CLEMONS *v.* RANEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 96–7207. BOULINEAU *v.* WEST, SECRETARY OF THE ARMY, ET AL. C. A. 11th Cir. Certiorari denied.

No. 96–7208. BATICADOS *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 96–7210. CARILLO *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 96–7216. DURHAM *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 673 So. 2d 196.

No. 96–7219. MARK *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 96–7228. SMITH *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 544 Pa. 219, 675 A. 2d 1221.

No. 96–7231. POWELL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 96–7232. BARTHOLIC *v.* STEWART, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 96–7234. HUSS *v.* ACEVEDO, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 96–7235. JONES *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 96–7237. CHEEK *v.* HORN, COMMISSIONER, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–7239. CROSS *v.* MURPHY. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 96–7241. KING *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 96–7243. CROSS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 96–7248. VICTOR *v.* HOPKINS, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 90 F. 3d 276.

No. 96–7287. HYDE *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 186 Ariz. 252, 921 P. 2d 655.

No. 96–7290. FOSTER *v.* GIANT FOOD, INC. Ct. App. D. C. Certiorari denied.

No. 96–7333. ROBINSON *v.* VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 92 F. 3d 1181.

No. 96–7402. EGUITA *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 95 F. 3d 1168.

No. 96–7403. EVERETT *v.* BOARD OF IMMIGRATION APPEALS. C. A. 11th Cir. Certiorari denied.

No. 96–7404. COLEMAN *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 96–7426. MOSELEY *v.* NORTH CAROLINA. Super. Ct. N. C., Stokes County. Certiorari denied.

No. 96–7427. ANTONELLI *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 281 Ill. App. 3d 1124, 701 N. E. 2d 833.

No. 96–7436. BRANCATO *v.* GRADY. C. A. 8th Cir. Certiorari denied. Reported below: 99 F. 3d 1143.

No. 96–7452. MOORE ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 100 F. 3d 970.

No. 96–7469. HUSSKE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 252 Va. 203, 476 S. E. 2d 920.

No. 96–7512. RUPERT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 281 Ill. App. 3d 1132, 701 N. E. 2d 836.

No. 96–7529. LENNARTZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 99 F. 3d 1147.

No. 96–7530. CASTILLO REYES *v.* MANUEL SOLLOSO ET AL. C. A. D. C. Cir. Certiorari denied.

No. 96–7570. FOSTER *v.* UNITED STATES MARSHALS SERVICE. C. A. D. C. Cir. Certiorari denied.

No. 96–7586. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 101 F. 3d 699.

No. 96–7587. RUSSELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 100 F. 3d 969.

No. 96–7594. OGUGUO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 103 F. 3d 130.

No. 96–7596. SCHNEIDER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 94 F. 3d 649.

No. 96–7600. MORRISON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 101 F. 3d 699.

No. 96–7601. BROCCHINI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 101 F. 3d 699.

No. 96–7610. BETANCOURT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 101 F. 3d 698.

No. 96–7612. NWOBI, AKA OKORIE, AKA KENNEDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 96–7615. CARPENTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 773.

No. 96–7616. CECCARANI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 98 F. 3d 126.

No. 96–7619. COWAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 99 F. 3d 1151.

No. 96–7620. ARNOLD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 99 F. 3d 1147.

No. 96–7624. RUIZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 104 F. 3d 351.

No. 96–7626. RUNNELS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 93 F. 3d 390.

No. 96–7627. REVELES-RAMOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 97 F. 3d 1462.

No. 96–7629. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 101 F. 3d 709.

No. 96–7630. PREVITTE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 99 F. 3d 1132.

No. 96–7632. PALMIERI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 99 F. 3d 1148.

No. 96–7633. ALVARADO-DELGADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 98 F. 3d 492.

No. 96–7634. BUTLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 103 F. 3d 120.

No. 96–7642. LEON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 112 F. 3d 506.

No. 96–7644. ATCHESON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 1237.

No. 96–7646. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 85 F. 3d 617.

No. 96–7654. EZEOKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 95 F. 3d 1148.

No. 96–7664. COHEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1173.

No. 96–7667. WOMACK *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 673 A. 2d 603.

No. 96–7668. WEBB *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 98 F. 3d 585.

No. 96–7678. DANIELS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 99 F. 3d 1144.

No. 96–7679. FLUCAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 99 F. 3d 177.

No. 96–7680. HAWKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 99 F. 3d 1132.

No. 96–7681. DELMARLE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 99 F. 3d 80.

No. 96–7704. WELKY *v.* MAKOWSKI, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 96–974. HENRY *v.* CITY OF SHERMAN. Sup. Ct. Tex. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 928 S. W. 2d 464.

Rehearing Denied

No. 96–662. BANK OF NEW YORK, AS COLLATERAL TRUSTEE, ET AL. *v.* CONTINENTAL AIRLINES, INC., *ante,* p. 1057;
No. 96–780. RUDE ET AL. *v.* UNITED STATES, *ante,* p. 1058;
No. 96–6271. WILLIAMS *v.* NORTH CAROLINA, *ante,* p. 1061;
No. 96–6485. REAPE *v.* NEW YORK DAILY NEWS, *ante,* p. 1063;
No. 96–6504. STOIANOFF *v.* TRW, INC., ET AL., *ante,* p. 1063;
No. 96–6723. ANDRZEJEWSKI *v.* CALIFORNIA WORKERS' COMPENSATION APPEALS BOARD ET AL., *ante,* p. 1095;

No. 96–6802. VELEZ *v.* PUERTO RICO, *ante,* p. 1067;

No. 96–6804. ARTEAGA *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, *ante,* p. 1097;

No. 96–6827. GIBBS *v.* UNITED STATES, *ante,* p. 1068;

No. 96–6854. RANEY *v.* UNITED STATES, *ante,* p. 1069; and

No. 96–6965. KARIM-PANAHI *v.* COMMISSIONER OF INTERNAL REVENUE, *ante,* p. 1083. Petitions for rehearing denied.

FEBRUARY 26, 1997

Miscellaneous Orders

No. A–615. GRAY *v.* NETHERLAND, WARDEN. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. 96–7984 (A–609). IN RE GRAY. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Petition for writ of habeas corpus and petition for writ of mandamus denied.

Certiorari Denied

No. 96–7976 (A–612). GRAY *v.* NETHERLAND, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. Reported below: 99 F. 3d 158.

RULES OF THE SUPREME COURT OF THE UNITED STATES

ADOPTED JANUARY 16, 1997

EFFECTIVE MAY 1, 1997

The following are the Rules of the Supreme Court of the United States as revised on January 16, 1997. See *post,* p. 1160. The amended Rules became effective May 1, 1997, as provided in Rule 48, *post,* p. 1218.

For previous revisions of the Rules of the Supreme Court see 346 U. S. 949, 388 U. S. 931, 398 U. S. 1013, 445 U. S. 985, 493 U. S. 1099, and 515 U. S. 1197.

ORDER ADOPTING REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

THURSDAY, JANUARY 16, 1997

IT IS ORDERED that the revised Rules of this Court, today approved by the Court and lodged with the Clerk, shall be effective May 1, 1997, and be printed as an appendix to the United States Reports.

IT IS FURTHER ORDERED that the Rules promulgated July 26, 1995, see 515 U. S. 1197, shall be rescinded as of April 30, 1997, and that the revised Rules shall govern all proceedings in cases commenced after that date and, to the extent feasible and just, cases then pending.

RULES OF THE SUPREME COURT OF THE UNITED STATES

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RULES OF THE SUPREME COURT OF THE UNITED STATES

ADOPTED JANUARY 16, 1997—EFFECTIVE MAY 1, 1997

PART I. THE COURT

Rule 1. Clerk

1. The Clerk receives documents for filing with the Court and has authority to reject any submitted filing that does not comply with these Rules.

2. The Clerk maintains the Court's records and will not permit any of them to be removed from the Court building except as authorized by the Court. Any document filed with the Clerk and made a part of the Court's records may not thereafter be withdrawn from the official Court files. After the conclusion of proceedings in this Court, original records and documents transmitted to this Court by any other court will be returned to the court from which they were received.

3. Unless the Court or the Chief Justice orders otherwise, the Clerk's office is open from 9 a.m. to 5 p.m., Monday through Friday, except on federal legal holidays listed in 5 U. S. C. § 6103.

Rule 2. Library

1. The Court's library is available for use by appropriate personnel of this Court, members of the Bar of this Court, Members of Congress and their legal staffs, and attorneys for the United States and for federal departments and agencies.

2. The library's hours are governed by regulations made by the Librarian with the approval of the Chief Justice or the Court.

3. Library books may not be removed from the Court building, except by a Justice or a member of a Justice's staff.

Rule 3. Term

The Court holds a continuous annual Term commencing on the first Monday in October and ending on the day before the first Monday in October of the following year. See 28 U. S. C. § 2. At the end of each Term, all cases pending on the docket are continued to the next Term.

Rule 4. Sessions and Quorum

1. Open sessions of the Court are held beginning at 10 a.m. on the first Monday in October of each year, and thereafter as announced by the Court. Unless it orders otherwise, the Court sits to hear arguments from 10 a.m. until noon and from 1 p.m. until 3 p.m.

2. Six Members of the Court constitute a quorum. See 28 U. S. C. § 1. In the absence of a quorum on any day appointed for holding a session of the Court, the Justices attending—or if no Justice is present, the Clerk or a Deputy Clerk—may announce that the Court will not meet until there is a quorum.

3. When appropriate, the Court will direct the Clerk or the Marshal to announce recesses.

PART II. ATTORNEYS AND COUNSELORS

Rule 5. Admission to the Bar

1. To qualify for admission to the Bar of this Court, an applicant must have been admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for a period of at least three years immediately before the date of application; must not have been the subject of any adverse disciplinary action pronounced or in effect during that 3-year period; and must appear to the Court to be of good moral and professional character.

2. Each applicant shall file with the Clerk (1) a certificate from the presiding judge, clerk, or other authorized official of that court evidencing the applicant's admission to practice there and the applicant's current good standing, and (2) a

completely executed copy of the form approved by this Court and furnished by the Clerk containing (a) the applicant's personal statement, and (b) the statement of two sponsors endorsing the correctness of the applicant's statement, stating that the applicant possesses all the qualifications required for admission, and affirming that the applicant is of good moral and professional character. Both sponsors must be members of the Bar of this Court who personally know, but are not related to, the applicant.

3. If the documents submitted demonstrate that the applicant possesses the necessary qualifications, and if the applicant has signed the oath or affirmation and paid the required fee, the Clerk will notify the applicant of acceptance by the Court as a member of the Bar and issue a certificate of admission. An applicant who so wishes may be admitted in open court on oral motion by a member of the Bar of this Court, provided that all other requirements for admission have been satisfied.

4. Each applicant shall sign the following oath or affirmation: I, ..., do solemnly swear (or affirm) that as an attorney and as a counselor of this Court, I will conduct myself uprightly and according to law, and that I will support the Constitution of the United States.

5. The fee for admission to the Bar and a certificate bearing the seal of the Court is $100, payable to the United States Supreme Court. The Marshal will deposit such fees in a separate fund to be disbursed by the Marshal at the direction of the Chief Justice for the costs of admissions, for the benefit of the Court and its Bar, and for related purposes.

6. The fee for a duplicate certificate of admission to the Bar bearing the seal of the Court is $15, payable to the United States Supreme Court. The proceeds will be maintained by the Marshal as provided in paragraph 5 of this Rule.

Rule 6. Argument *Pro Hac Vice*

1. An attorney not admitted to practice in the highest court of a State, Commonwealth, Territory or Possession, or the District of Columbia for the requisite three years, but

otherwise eligible for admission to practice in this Court under Rule 5.1, may be permitted to argue *pro hac vice.*

2. An attorney qualified to practice in the courts of a foreign state may be permitted to argue *pro hac vice.*

3. Oral argument *pro hac vice* is allowed only on motion of the counsel of record for the party on whose behalf leave is requested. The motion shall state concisely the qualifications of the attorney who is to argue *pro hac vice.* It shall be filed with the Clerk, in the form required by Rule 21, no later than the date on which the respondent's or appellee's brief on the merits is due to be filed, and it shall be accompanied by proof of service as required by Rule 29.

Rule 7. Prohibition Against Practice

No employee of this Court shall practice as an attorney or counselor in any court or before any agency of government while employed by the Court; nor shall any person after leaving such employment participate in any professional capacity in any case pending before this Court or in any case being considered for filing in this Court, until two years have elapsed after separation; nor shall a former employee ever participate in any professional capacity in any case that was pending in this Court during the employee's tenure.

Rule 8. Disbarment and Disciplinary Action

1. Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, or has engaged in conduct unbecoming a member of the Bar of this Court, the Court will enter an order suspending that member from practice before this Court and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered. Upon response, or if no response is timely filed, the Court will enter an appropriate order.

2. After reasonable notice and an opportunity to show cause why disciplinary action should not be taken, and after a hearing if material facts are in dispute, the Court may take any appropriate disciplinary action against any attorney who

is admitted to practice before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule or order of the Court.

Rule 9. Appearance of Counsel

1. An attorney seeking to file a document in this Court in a representative capacity must first be admitted to practice before this Court as provided in Rule 5, except that admission to the Bar of this Court is not required for an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute. The attorney whose name, address, and telephone number appear on the cover of a document presented for filing is considered counsel of record, and a separate notice of appearance need not be filed. If the name of more than one attorney is shown on the cover of the document, the attorney who is counsel of record shall be clearly identified.

2. An attorney representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented. A separate notice of appearance shall also be entered whenever an attorney is substituted as counsel of record in a particular case.

PART III. JURISDICTION ON WRIT OF CERTIORARI

Rule 10. Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Rule 11. Certiorari to a United States Court of Appeals Before Judgment

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U. S. C. § 2101(e).

Rule 12. Review on Certiorari: How Sought; Parties

1. Except as provided in paragraph 2 of this Rule, the petitioner shall file 40 copies of a petition for a writ of certiorari, prepared as required by Rule 33.1, and shall pay the Rule 38(a) docket fee.

2. A petitioner proceeding *in forma pauperis* under Rule 39 shall file an original and 10 copies of a petition for a writ of certiorari prepared as required by Rule 33.2, together with an original and 10 copies of the motion for leave to proceed *in forma pauperis*. A copy of the motion shall pre-

cede and be attached to each copy of the petition. An inmate confined in an institution, if proceeding *in forma pauperis* and not represented by counsel, need file only an original petition and motion.

3. Whether prepared under Rule 33.1 or Rule 33.2, the petition shall comply in all respects with Rule 14 and shall be submitted with proof of service as required by Rule 29. The case then will be placed on the docket. It is the petitioner's duty to notify all respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the case was placed on the docket, and the docket number of the case. The notice shall be served as required by Rule 29.

4. Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari; or any two or more may join in a petition. A party not shown on the petition as joined therein at the time the petition is filed may not later join in that petition. When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices. A petition for a writ of certiorari may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached.

5. No more than 30 days after a case has been placed on the docket, a respondent seeking to file a conditional cross-petition (*i. e.*, a cross-petition that otherwise would be untimely) shall file, with proof of service as required by Rule 29, 40 copies of the cross-petition prepared as required by Rule 33.1, except that a cross-petitioner proceeding *in forma pauperis* under Rule 39 shall comply with Rule 12.2. The cross-petition shall comply in all respects with this Rule and Rule 14, except that material already reproduced in the appendix to the opening petition need not be reproduced again. A cross-petitioning respondent shall pay the Rule 38(a) docket fee or submit a motion for leave to proceed *in forma pauperis*. The cover of the cross-petition shall indicate clearly that it is a conditional cross-petition. The cross-

petition then will be placed on the docket, subject to the provisions of Rule 13.4. It is the cross-petitioner's duty to notify all cross-respondents promptly, on a form supplied by the Clerk, of the date of filing, the date the cross-petition was placed on the docket, and the docket number of the cross-petition. The notice shall be served as required by Rule 29. A cross-petition for a writ of certiorari may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The time to file a conditional cross-petition will not be extended.

6. All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties entitled to file documents in this Court, unless the petitioner notifies the Clerk of this Court in writing of the petitioner's belief that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served as required by Rule 29 on all parties to the proceeding below. A party noted as no longer interested may remain a party by notifying the Clerk promptly, with service on the other parties, of an intention to remain a party. All parties other than the petitioner are considered respondents, but any respondent who supports the position of a petitioner shall meet the petitioner's time schedule for filing documents, except that a response supporting the petition shall be filed within 20 days after the case is placed on the docket, and that time will not be extended. Parties who file no document will not qualify for any relief from this Court.

7. The clerk of the court having possession of the record shall keep it until notified by the Clerk of this Court to certify and transmit it. In any document filed with this Court, a party may cite or quote from the record, even if it has not been transmitted to this Court. When requested by the Clerk of this Court to certify and transmit the record, or any part of it, the clerk of the court having possession of the record shall number the documents to be certified and shall transmit therewith a numbered list specifically identifying each document transmitted. If the record, or stipulated por-

tions, have been printed for the use of the court below, that printed record, plus the proceedings in the court below, may be certified as the record unless one of the parties or the Clerk of this Court requests otherwise. The record may consist of certified copies, but if the lower court is of the view that original documents of any kind should be seen by this Court, that court may provide by order for the transport, safekeeping, and return of such originals.

Rule 13. Review on Certiorari: Time for Petitioning

1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.

2. The Clerk will not file any petition for a writ of certiorari that is jurisdictionally out of time. See, *e. g.*, 28 U. S. C. § 2101(c).

3. The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). But if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. A suggestion made to a United States court of appeals for a rehearing en banc is not a petition for rehearing within the meaning of this Rule unless so treated by the United States court of appeals.

4. A cross-petition for a writ of certiorari is timely when it is filed with the Clerk as provided in paragraphs 1, 3, and 5 of this Rule, or in Rule 12.5. However, a conditional cross-petition (which except for Rule 12.5 would be untimely) will not be granted unless another party's timely petition for a writ of certiorari is granted.

5. For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days. An application to extend the time to file shall set out the basis for jurisdiction in this Court, identify the judgment sought to be reviewed, include a copy of the opinion and any order respecting rehearing, and set out specific reasons why an extension of time is justified. The application must be received by the Clerk at least 10 days before the date the petition is due, except in extraordinary circumstances. For the time and manner of presenting the application, see Rules 21, 22, 30, and 33.2. An application to extend the time to file a petition for a writ of certiorari is not favored.

Rule 14. Content of a Petition for a Writ of Certiorari

1. A petition for a writ of certiorari shall contain, in the order indicated:

(a) The questions presented for review, expressed concisely in relation to the circumstances of the case, without unnecessary detail. The questions should be short and should not be argumentative or repetitive. If the petitioner or respondent is under a death sentence that may be affected by the disposition of the petition, the notation "capital case" shall precede the questions presented. The questions shall be set out on the first page following the cover, and no other information may appear on that page. The statement of any question presented is deemed to comprise every subsidiary question fairly included therein. Only the questions set out in the petition, or fairly included therein, will be considered by the Court.

(b) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed (unless the caption of the case contains the names of all the parties), and a list of parent companies and nonwholly owned subsidiaries as required by Rule 29.6.

(c) If the petition exceeds five pages, a table of contents and a table of cited authorities.

(d) Citations of the official and unofficial reports of the opinions and orders entered in the case by courts or administrative agencies.

(e) A concise statement of the basis for jurisdiction in this Court, showing:

> (i) the date the judgment or order sought to be reviewed was entered (and, if applicable, a statement that the petition is filed under this Court's Rule 11);
>
> (ii) the date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the petition for a writ of certiorari;
>
> (iii) express reliance on Rule 12.5, when a cross-petition for a writ of certiorari is filed under that Rule, and the date of docketing of the petition for a writ of certiorari in connection with which the cross-petition is filed;
>
> (iv) the statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question; and
>
> (v) if applicable, a statement that the notifications required by Rule 29.4(b) or (c) have been made.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text shall be set out in the appendix referred to in subparagraph 1(i).

(g) A concise statement of the case setting out the facts material to consideration of the questions presented, and also containing the following:

> (i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when

the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e. g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. When the portions of the record relied on under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1(i).

(ii) If review of a judgment of a United States court of appeals is sought, the basis for federal jurisdiction in the court of first instance.

(h) A direct and concise argument amplifying the reasons relied on for allowance of the writ. See Rule 10.

(i) An appendix containing, in the order indicated:

(i) the opinions, orders, findings of fact, and conclusions of law, whether written or orally given and transcribed, entered in conjunction with the judgment sought to be reviewed;

(ii) any other relevant opinions, orders, findings of fact, and conclusions of law entered in the case by courts or administrative agencies, and, if reference thereto is necessary to ascertain the grounds of the judgment, of those in companion cases (each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of entry);

(iii) any order on rehearing, including the caption showing the name of the issuing court, the title and number of the case, and the date of entry;

(iv) the judgment sought to be reviewed if the date of its entry is different from the date of the opinion or order required in sub-subparagraph (i) of this subparagraph;

(v) material required by subparagraphs 1(f) or 1(g)(i); and

(vi) any other material the petitioner believes essential to understand the petition.

If the material required by this subparagraph is voluminous, it may be presented in a separate volume or volumes with appropriate covers.

2. All contentions in support of a petition for a writ of certiorari shall be set out in the body of the petition, as provided in subparagraph 1(h) of this Rule. No separate brief in support of a petition for a writ of certiorari may be filed, and the Clerk will not file any petition for a writ of certiorari to which any supporting brief is annexed or appended.

3. A petition for a writ of certiorari should be stated briefly and in plain terms and may not exceed the page limitations specified in Rule 33.

4. The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition.

5. If the Clerk determines that a petition submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. A corrected petition received no more than 60 days after the date of the Clerk's letter will be deemed timely.

Rule 15. Briefs in Opposition; Reply Briefs; Supplemental Briefs

1. A brief in opposition to a petition for a writ of certiorari may be filed by the respondent in any case, but is not mandatory except in a capital case, see Rule 14.1(a), or when ordered by the Court.

2. A brief in opposition should be stated briefly and in plain terms and may not exceed the page limitations specified in Rule 33. In addition to presenting other arguments

for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition.

3. Any brief in opposition shall be filed within 30 days after the case is placed on the docket, unless the time is extended by the Court or a Justice, or by the Clerk under Rule 30.4. Forty copies shall be filed, except that a respondent proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis,* a copy of which shall precede and be attached to each copy of the brief in opposition. If the petitioner is proceeding *in forma pauperis,* the respondent may file an original and 10 copies of a brief in opposition prepared as required by Rule 33.2. Whether prepared under Rule 33.1 or Rule 33.2, the brief in opposition shall comply with the requirements of Rule 24 governing a respondent's brief, except that no summary of the argument is required. A brief in opposition may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The brief in opposition shall be served as required by Rule 29.

4. No motion by a respondent to dismiss a petition for a writ of certiorari may be filed. Any objections to the jurisdiction of the Court to grant a petition for a writ of certiorari shall be included in the brief in opposition.

5. The Clerk will distribute the petition to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief in

opposition is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the petition, brief in opposition, and any reply brief to the Court for its consideration no less than 10 days after the brief in opposition is filed.

6. Any petitioner may file a reply brief addressed to new points raised in the brief in opposition, but distribution and consideration by the Court under paragraph 5 of this Rule will not be deferred pending its receipt. Forty copies shall be filed, except that petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The reply brief shall be served as required by Rule 29.

7. If a cross-petition for a writ of certiorari has been docketed, distribution of both petitions will be deferred until the cross-petition is due for distribution under this Rule.

8. Any party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by this Rule. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

Rule 16. Disposition of a Petition for a Writ of Certiorari

1. After considering the documents distributed under Rule 15, the Court will enter an appropriate order. The order may be a summary disposition on the merits.

2. Whenever the Court grants a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and

the court whose judgment is to be reviewed. The case then will be scheduled for briefing and oral argument. If the record has not previously been filed in this Court, the Clerk will request the clerk of the court having possession of the record to certify and transmit it. A formal writ will not issue unless specially directed.

3. Whenever the Court denies a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect and will notify forthwith counsel of record and the court whose judgment was sought to be reviewed. The order of denial will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Justice.

PART IV. OTHER JURISDICTION

Rule 17. Procedure in an Original Action

1. This Rule applies only to an action invoking the Court's original jurisdiction under Article III of the Constitution of the United States. See also 28 U. S. C. § 1251 and U. S. Const., Amdt. 11. A petition for an extraordinary writ in aid of the Court's appellate jurisdiction shall be filed as provided in Rule 20.

2. The form of pleadings and motions prescribed by the Federal Rules of Civil Procedure is followed. In other respects, those Rules and the Federal Rules of Evidence may be taken as guides.

3. The initial pleading shall be preceded by a motion for leave to file, and may be accompanied by a brief in support of the motion. Forty copies of each document shall be filed, with proof of service. Service shall be as required by Rule 29, except that when an adverse party is a State, service shall be made on both the Governor and the Attorney General of that State.

4. The case will be placed on the docket when the motion for leave to file and the initial pleading are filed with the Clerk. The Rule 38(a) docket fee shall be paid at that time.

5. No more than 60 days after receiving the motion for leave to file and the initial pleading, an adverse party shall

file 40 copies of any brief in opposition to the motion, with proof of service as required by Rule 29. The Clerk will distribute the filed documents to the Court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief is filed, upon the expiration of the time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the filed documents to the Court for its consideration no less than 10 days after the brief in opposition is filed. A reply brief may be filed, but consideration of the case will not be deferred pending its receipt. The Court thereafter may grant or deny the motion, set it for oral argument, direct that additional documents be filed, or require that other proceedings be conducted.

6. A summons issued out of this Court shall be served on the defendant 60 days before the return day specified therein. If the defendant does not respond by the return day, the plaintiff may proceed *ex parte.*

7. Process against a State issued out of this Court shall be served on both the Governor and the Attorney General of that State.

Rule 18. Appeal from a United States District Court

1. When a direct appeal from a decision of a United States district court is authorized by law, the appeal is commenced by filing a notice of appeal with the clerk of the district court within the time provided by law after entry of the judgment sought to be reviewed. The time to file may not be extended. The notice of appeal shall specify the parties taking the appeal, designate the judgment, or part thereof, appealed from and the date of its entry, and specify the statute or statutes under which the appeal is taken. A copy of the notice of appeal shall be served on all parties to the proceeding as required by Rule 29, and proof of service shall be filed in the district court together with the notice of appeal.

2. All parties to the proceeding in the district court are deemed parties entitled to file documents in this Court, but a party having no interest in the outcome of the appeal may

so notify the Clerk of this Court and shall serve a copy of the notice on all other parties. Parties interested jointly, severally, or otherwise in the judgment may appeal separately, or any two or more may join in an appeal. When two or more judgments involving identical or closely related questions are sought to be reviewed on appeal from the same court, a notice of appeal for each judgment shall be filed with the clerk of the district court, but a single jurisdictional statement covering all the judgments suffices. Parties who file no document will not qualify for any relief from this Court.

3. No more than 60 days after filing the notice of appeal in the district court, the appellant shall file 40 copies of a jurisdictional statement and shall pay the Rule 38 docket fee, except that an appellant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the jurisdictional statement. The jurisdictional statement shall follow, insofar as applicable, the form for a petition for a writ of certiorari prescribed by Rule 14, and shall be served as required by Rule 29. The case will then be placed on the docket. It is the appellant's duty to notify all appellees promptly, on a form supplied by the Clerk, of the date of filing, the date the case was placed on the docket, and the docket number of the case. The notice shall be served as required by Rule 29. The appendix shall include a copy of the notice of appeal showing the date it was filed in the district court. For good cause, a Justice may extend the time to file a jurisdictional statement for a period not exceeding 60 days. An application to extend the time to file a jurisdictional statement shall set out the basis for jurisdiction in this Court; identify the judgment sought to be reviewed; include a copy of the opinion, any order respecting rehearing, and the notice of appeal; and set out specific reasons why an extension of time is justified. For the time and manner of presenting the application, see Rules 21,

22, and 30. An application to extend the time to file a jurisdictional statement is not favored.

4. No more than 30 days after a case has been placed on the docket, an appellee seeking to file a conditional cross-appeal (*i. e.*, a cross-appeal that otherwise would be untimely) shall file, with proof of service as required by Rule 29, a jurisdictional statement that complies in all respects (including number of copies filed) with paragraph 3 of this Rule, except that material already reproduced in the appendix to the opening jurisdictional statement need not be reproduced again. A cross-appealing appellee shall pay the Rule 38 docket fee or submit a motion for leave to proceed *in forma pauperis.* The cover of the cross-appeal shall indicate clearly that it is a conditional cross-appeal. The cross-appeal then will be placed on the docket. It is the cross-appellant's duty to notify all cross-appellees promptly, on a form supplied by the Clerk, of the date of filing, the date the cross-appeal was placed on the docket, and the docket number of the cross-appeal. The notice shall be served as required by Rule 29. A cross-appeal may not be joined with any other pleading, except that any motion for leave to proceed *in forma pauperis* shall be attached. The time to file a cross-appeal will not be extended.

5. After a notice of appeal has been filed in the district court, but before the case is placed on this Court's docket, the parties may dismiss the appeal by stipulation filed in the district court, or the district court may dismiss the appeal on the appellant's motion, with notice to all parties. If a notice of appeal has been filed, but the case has not been placed on this Court's docket within the time prescribed for docketing, the district court may dismiss the appeal on the appellee's motion, with notice to all parties, and may make any just order with respect to costs. If the district court has denied the appellee's motion to dismiss the appeal, the appellee may move this Court to docket and dismiss the appeal by filing an original and 10 copies of a motion presented in conformity with Rules 21 and 33.2. The motion shall be accompanied by proof of service as required by Rule 29, and

by a certificate from the clerk of the district court, certifying that a notice of appeal was filed and that the appellee's motion to dismiss was denied. The appellant may not thereafter file a jurisdictional statement without special leave of the Court, and the Court may allow costs against the appellant.

6. Within 30 days after the case is placed on this Court's docket, the appellee may file a motion to dismiss, to affirm, or in the alternative to affirm or dismiss. Forty copies of the motion shall be filed, except that an appellee proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis*, a copy of which shall precede and be attached to each copy of the motion to dismiss, to affirm, or in the alternative to affirm or dismiss. The motion shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15, and shall comply in all respects with Rule 21.

7. The Clerk will distribute the jurisdictional statement to the Court for its consideration upon receiving an express waiver of the right to file a motion to dismiss or to affirm or, if no waiver or motion is filed, upon the expiration of the time allowed for filing. If a motion to dismiss or to affirm is timely filed, the Clerk will distribute the jurisdictional statement, motion, and any brief opposing the motion to the Court for its consideration no less than 10 days after the motion is filed.

8. Any appellant may file a brief opposing a motion to dismiss or to affirm, but distribution and consideration by the Court under paragraph 7 of this Rule will not be deferred pending its receipt. Forty copies shall be filed, except that an appellant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The brief shall be served as required by Rule 29.

9. If a cross-appeal has been docketed, distribution of both jurisdictional statements will be deferred until the cross-appeal is due for distribution under this Rule.

10. Any party may file a supplemental brief at any time while a jurisdictional statement is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. A supplemental brief shall be restricted to new matter and shall follow, insofar as applicable, the form for a brief in opposition prescribed by Rule 15. Forty copies shall be filed, except that a party proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The supplemental brief shall be served as required by Rule 29.

11. The clerk of the district court shall retain possession of the record until notified by the Clerk of this Court to certify and transmit it. See Rule 12.7.

12. After considering the documents distributed under this Rule, the Court may dispose summarily of the appeal on the merits, note probable jurisdiction, or postpone consideration of jurisdiction until a hearing of the case on the merits. If not disposed of summarily, the case stands for briefing and oral argument on the merits. If consideration of jurisdiction is postponed, counsel, at the outset of their briefs and at oral argument, shall address the question of jurisdiction. If the record has not previously been filed in this Court, the Clerk of this Court will request the clerk of the court in possession of the record to certify and transmit it.

13. If the Clerk determines that a jurisdictional statement submitted timely and in good faith is in a form that does not comply with this Rule or with Rule 33 or Rule 34, the Clerk will return it with a letter indicating the deficiency. If a corrected jurisdictional statement is received no more than 60 days after the date of the Clerk's letter, its filing will be deemed timely.

Rule 19. Procedure on a Certified Question

1. A United States court of appeals may certify to this Court a question or proposition of law on which it seeks instruction for the proper decision of a case. The certificate

shall contain a statement of the nature of the case and the facts on which the question or proposition of law arises. Only questions or propositions of law may be certified, and they shall be stated separately and with precision. The certificate shall be prepared as required by Rule 33.2 and shall be signed by the clerk of the court of appeals.

2. When a question is certified by a United States court of appeals, this Court, on its own motion or that of a party, may consider and decide the entire matter in controversy. See 28 U. S. C. § 1254(2).

3. When a question is certified, the Clerk will notify the parties and docket the case. Counsel shall then enter their appearances. After docketing, the Clerk will submit the certificate to the Court for a preliminary examination to determine whether the case should be briefed, set for argument, or dismissed. No brief may be filed until the preliminary examination of the certificate is completed.

4. If the Court orders the case briefed or set for argument, the parties will be notified and permitted to file briefs. The Clerk of this Court then will request the clerk of the court in possession of the record to certify and transmit it. Any portion of the record to which the parties wish to direct the Court's particular attention should be printed in a joint appendix, prepared in conformity with Rule 26 by the appellant or petitioner in the court of appeals, but the fact that any part of the record has not been printed does not prevent the parties or the Court from relying on it.

5. A brief on the merits in a case involving a certified question shall comply with Rules 24, 25, and 33.1, except that the brief for the party who is the appellant or petitioner below shall be filed within 45 days of the order requiring briefs or setting the case for argument.

Rule 20. Procedure on a Petition for an Extraordinary Writ

1. Issuance by the Court of an extraordinary writ authorized by 28 U. S. C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of

any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

2. A petition seeking a writ authorized by 28 U. S. C. § 1651(a), § 2241, or § 2254(a) shall be prepared in all respects as required by Rules 33 and 34. The petition shall be captioned "*In re* [name of petitioner]" and shall follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14. All contentions in support of the petition shall be included in the petition. The case will be placed on the docket when 40 copies of the petition are filed with the Clerk and the docket fee is paid, except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2, together with a motion for leave to proceed *in forma pauperis,* a copy of which shall precede and be attached to each copy of the petition. The petition shall be served as required by Rule 29 (subject to subparagraph 4(b) of this Rule).

3. (a) A petition seeking a writ of prohibition, a writ of mandamus, or both in the alternative shall state the name and office or function of every person against whom relief is sought and shall set out with particularity why the relief sought is not available in any other court. A copy of the judgment with respect to which the writ is sought, including any related opinion, shall be appended to the petition together with any other document essential to understanding the petition.

(b) The petition shall be served on every party to the proceeding with respect to which relief is sought. Within 30 days after the petition is placed on the docket, a party shall file 40 copies of any brief or briefs in opposition thereto, which shall comply fully with Rule 15. If a party named as a respondent does not wish to respond to the petition, that party may so advise the Clerk and all other parties by letter.

All persons served are deemed respondents for all purposes in the proceedings in this Court.

4. (a) A petition seeking a writ of habeas corpus shall comply with the requirements of 28 U. S. C. §§ 2241 and 2242, and in particular with the provision in the last paragraph of § 2242, which requires a statement of the "reasons for not making application to the district court of the district in which the applicant is held." If the relief sought is from the judgment of a state court, the petition shall set out specifically how and where the petitioner has exhausted available remedies in the state courts or otherwise comes within the provisions of 28 U. S. C. § 2254(b). To justify the granting of a writ of habeas corpus, the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. This writ is rarely granted.

(b) Habeas corpus proceedings, except in capital cases, are *ex parte*, unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted. A response, if ordered, or in a capital case, shall comply fully with Rule 15. Neither the denial of the petition, without more, nor an order of transfer to a district court under the authority of 28 U. S. C. § 2241(b), is an adjudication on the merits, and therefore does not preclude further application to another court for the relief sought.

5. The Clerk will distribute the documents to the Court for its consideration when a brief in opposition under subparagraph 3(b) of this Rule has been filed, when a response under subparagraph 4(b) has been ordered and filed, when the time to file has expired, or when the right to file has been expressly waived.

6. If the Court orders the case set for argument, the Clerk will notify the parties whether additional briefs are required, when they shall be filed, and, if the case involves a petition for a common-law writ of certiorari, that the parties shall prepare a joint appendix in accordance with Rule 26.

PART V. MOTIONS AND APPLICATIONS

Rule 21. Motions to the Court

1. Every motion to the Court shall clearly state its purpose and the facts on which it is based and may present legal argument in support thereof. No separate brief may be filed. A motion should be concise and shall comply with any applicable page limits. Rule 22 governs an application addressed to a single Justice.

2. (a) A motion in any action within the Court's original jurisdiction shall comply with Rule 17.3.

(b) A motion to dismiss as moot (or a suggestion of mootness), a motion for leave to file a brief as *amicus curiae*, and any motion the granting of which would dispose of the entire case or would affect the final judgment to be entered (other than a motion to docket and dismiss under Rule 18.5 or a motion for voluntary dismissal under Rule 46) shall be prepared as required by Rule 33.1, and 40 copies shall be filed, except that a movant proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file a motion prepared as required by Rule 33.2, and shall file the number of copies required for a petition by such a person under Rule 12.2. The motion shall be served as required by Rule 29.

(c) Any other motion to the Court shall be prepared as required by Rule 33.2; the moving party shall file an original and 10 copies. The Court subsequently may order the moving party to prepare the motion as required by Rule 33.1; in that event, the party shall file 40 copies.

3. A motion to the Court shall be filed with the Clerk and shall be accompanied by proof of service as required by Rule 29. No motion may be presented in open Court, other than a motion for admission to the Bar, except when the proceeding to which it refers is being argued. Oral argument on a motion will not be permitted unless the Court so directs.

4. Any response to a motion shall be filed as promptly as possible considering the nature of the relief sought and any

asserted need for emergency action, and, in any event, within 10 days of receipt, unless the Court or a Justice, or the Clerk under Rule 30.4, orders otherwise. A response to a motion prepared as required by Rule 33.1, except a response to a motion for leave to file an *amicus curiae* brief (see Rule 37.5), shall be prepared in the same manner if time permits. In an appropriate case, the Court may act on a motion without waiting for a response.

Rule 22. Applications to Individual Justices

1. An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the sought relief.

2. The original and two copies of any application addressed to an individual Justice shall be prepared as required by Rule 33.2, and shall be accompanied by proof of service as required by Rule 29.

3. An application shall be addressed to the Justice allotted to the Circuit from which the case arises. When the Circuit Justice is unavailable for any reason, the application addressed to that Justice will be distributed to the Justice then available who is next junior to the Circuit Justice; the turn of the Chief Justice follows that of the most junior Justice.

4. A Justice denying an application will note the denial thereon. Thereafter, unless action thereon is restricted by law to the Circuit Justice or is untimely under Rule 30.2, the party making an application, except in the case of an application for an extension of time, may renew it to any other Justice, subject to the provisions of this Rule. Except when the denial is without prejudice, a renewed application is not favored. Renewed application is made by a letter to the Clerk, designating the Justice to whom the application is to be directed, and accompanied by 10 copies of the original application and proof of service as required by Rule 29.

5. A Justice to whom an application for a stay or for bail is submitted may refer it to the Court for determination.

6. The Clerk will advise all parties concerned, by appropriately speedy means, of the disposition made of an application.

Rule 23. Stays

1. A stay may be granted by a Justice as permitted by law.

2. A party to a judgment sought to be reviewed may present to a Justice an application to stay the enforcement of that judgment. See 28 U. S. C. § 2101(f).

3. An application for a stay shall set out with particularity why the relief sought is not available from any other court or judge. Except in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof. An application for a stay shall identify the judgment sought to be reviewed and have appended thereto a copy of the order and opinion, if any, and a copy of the order, if any, of the court or judge below denying the relief sought, and shall set out specific reasons why a stay is justified. The form and content of an application for a stay are governed by Rules 22 and 33.2.

4. A judge, court, or Justice granting an application for a stay pending review by this Court may condition the stay on the filing of a supersedeas bond having an approved surety or sureties. The bond will be conditioned on the satisfaction of the judgment in full, together with any costs, interest, and damages for delay that may be awarded. If a part of the judgment sought to be reviewed has already been satisfied, or is otherwise secured, the bond may be conditioned on the satisfaction of the part of the judgment not otherwise secured or satisfied, together with costs, interest, and damages.

PART VI. BRIEFS ON THE MERITS AND ORAL ARGUMENT

Rule 24. Briefs on the Merits: In General

1. A brief on the merits for a petitioner or an appellant shall comply in all respects with Rules 33.1 and 34 and shall contain in the order here indicated:

(a) The questions presented for review under Rule 14.1(a). The questions shall be set out on the first page following the cover, and no other information may appear on that page. The phrasing of the questions presented need not be identical with that in the petition for a writ of certiorari or the jurisdictional statement, but the brief may not raise additional questions or change the substance of the questions already presented in those documents. At its option, however, the Court may consider a plain error not among the questions presented but evident from the record and otherwise within its jurisdiction to decide.

(b) A list of all parties to the proceeding in the court whose judgment is under review (unless the caption of the case in this Court contains the names of all parties). Any amended list of parent companies and nonwholly owned subsidiaries as required by Rule 29.6 shall be placed here.

(c) If the brief exceeds five pages, a table of contents and a table of cited authorities.

(d) Citations of the official and unofficial reports of the opinions and orders entered in the case by courts and administrative agencies.

(e) A concise statement of the basis for jurisdiction in this Court, including the statutory provisions and time factors on which jurisdiction rests.

(f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text, if not already set out in the petition for a writ of certiorari, jurisdictional statement, or an appendix to either document, shall be set out in an appendix to the brief.

(g) A concise statement of the case, setting out the facts material to the consideration of the questions presented, with appropriate references to the joint appendix, *e. g.*, App. 12, or to the record, *e. g.*, Record 12.

(h) A summary of the argument, suitably paragraphed. The summary should be a clear and concise condensation of the argument made in the body of the brief; mere repetition of the headings under which the argument is arranged is not sufficient.

(i) The argument, exhibiting clearly the points of fact and of law presented and citing the authorities and statutes relied on.

(j) A conclusion specifying with particularity the relief the party seeks.

2. A brief on the merits for a respondent or an appellee shall conform to the foregoing requirements, except that items required by subparagraphs 1(a), (b), (d), (e), (f), and (g) of this Rule need not be included unless the respondent or appellee is dissatisfied with their presentation by the opposing party.

3. A brief on the merits may not exceed the page limitations specified in Rule 33.1(g). An appendix to a brief may include only relevant material, and counsel are cautioned not to include in an appendix arguments or citations that properly belong in the body of the brief.

4. A reply brief shall conform to those portions of this Rule applicable to the brief for a respondent or an appellee, but, if appropriately divided by topical headings, need not contain a summary of the argument.

5. A reference to the joint appendix or to the record set out in any brief shall indicate the appropriate page number. If the reference is to an exhibit, the page numbers at which the exhibit appears, at which it was offered in evidence, and at which it was ruled on by the judge shall be indicated, *e. g.*, Pl. Exh. 14, Record 199, 2134.

6. A brief shall be concise, logically arranged with proper headings, and free of irrelevant, immaterial, or scandalous matter. The Court may disregard or strike a brief that does not comply with this paragraph.

Rule 25. Briefs on the Merits: Number of Copies and Time to File

1. The petitioner or appellant shall file 40 copies of the brief on the merits within 45 days of the order granting the

writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction.

2. The respondent or appellee shall file 40 copies of the brief on the merits within 30 days after receiving the brief for the petitioner or appellant.

3. The petitioner or appellant shall file 40 copies of the reply brief, if any, within 30 days after receiving the brief for the respondent or appellee, but any reply brief must actually be received by the Clerk not later than one week before the date of oral argument.

4. The time periods stated in paragraphs 1 and 2 of this Rule may be extended as provided in Rule 30. An application to extend the time to file a brief on the merits is not favored. If a case is advanced for hearing, the time to file briefs on the merits may be abridged as circumstances require pursuant to an order of the Court on its own motion or that of a party.

5. A party wishing to present late authorities, newly enacted legislation, or other intervening matter that was not available in time to be included in a brief may file 40 copies of a supplemental brief, restricted to such new matter and otherwise presented in conformity with these Rules, up to the time the case is called for oral argument or by leave of the Court thereafter.

6. After a case has been argued or submitted, the Clerk will not file any brief, except that of a party filed by leave of the Court.

7. The Clerk will not file any brief that is not accompanied by proof of service as required by Rule 29.

Rule 26. Joint Appendix

1. Unless the Clerk has allowed the parties to use the deferred method described in paragraph 4 of this Rule, the petitioner or appellant, within 45 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall file 40 copies of a joint appendix, prepared as required by Rule 33.1. The joint appendix shall contain: (1) the relevant

docket entries in all the courts below; (2) any relevant pleadings, jury instructions, findings, conclusions, or opinions; (3) the judgment, order, or decision under review; and (4) any other parts of the record that the parties particularly wish to bring to the Court's attention. Any of the foregoing items already reproduced in a petition for a writ of certiorari, jurisdictional statement, brief in opposition to a petition for a writ of certiorari, motion to dismiss or affirm, or any appendix to the foregoing, that was prepared as required by Rule 33.1, need not be reproduced again in the joint appendix. The petitioner or appellant shall serve three copies of the joint appendix on each of the other parties to the proceeding as required by Rule 29.

2. The parties are encouraged to agree on the contents of the joint appendix. In the absence of agreement, the petitioner or appellant, within 10 days after entry of the order granting the writ of certiorari, noting probable jurisdiction, or postponing consideration of jurisdiction, shall serve on the respondent or appellee a designation of parts of the record to be included in the joint appendix. Within 10 days after receiving the designation, a respondent or appellee who considers the parts of the record so designated insufficient shall serve on the petitioner or appellant a designation of additional parts to be included in the joint appendix, and the petitioner or appellant shall include the parts so designated. If the Court has permitted the respondent or appellee to proceed *in forma pauperis*, the petitioner or appellant may seek by motion to be excused from printing portions of the record the petitioner or appellant considers unnecessary. In making these designations, counsel should include only those materials the Court should examine; unnecessary designations should be avoided. The record is on file with the Clerk and available to the Justices, and counsel may refer in briefs and in oral argument to relevant portions of the record not included in the joint appendix.

3. When the joint appendix is filed, the petitioner or appellant immediately shall file with the Clerk a statement of the cost of printing 50 copies and shall serve a copy of the state-

ment on each of the other parties as required by Rule 29. Unless the parties agree otherwise, the cost of producing the joint appendix shall be paid initially by the petitioner or appellant; but a petitioner or appellant who considers that parts of the record designated by the respondent or appellee are unnecessary for the determination of the issues presented may so advise the respondent or appellee, who then shall advance the cost of printing the additional parts, unless the Court or a Justice otherwise fixes the initial allocation of the costs. The cost of printing the joint appendix is taxed as a cost in the case, but if a party unnecessarily causes matter to be included in the joint appendix or prints excessive copies, the Court may impose these costs on that party.

4. (a) On the parties' request, the Clerk may allow preparation of the joint appendix to be deferred until after the briefs have been filed. In that event, the petitioner or appellant shall file the joint appendix no more than 14 days after receiving the brief for the respondent or appellee. The provisions of paragraphs 1, 2, and 3 of this Rule shall be followed, except that the designations referred to therein shall be made by each party when that party's brief is served. Deferral of the joint appendix is not favored.

(b) If the deferred method is used, the briefs on the merits may refer to the pages of the record. In that event, the joint appendix shall include in brackets on each page thereof the page number of the record where that material may be found. A party wishing to refer directly to the pages of the joint appendix may serve and file copies of its brief prepared as required by Rule 33.2 within the time provided by Rule 25, with appropriate references to the pages of the record. In that event, within 10 days after the joint appendix is filed, copies of the brief prepared as required by Rule 33.1 containing references to the pages of the joint appendix in place of, or in addition to, the initial references to the pages of the record, shall be served and filed. No other change may be made in the brief as initially served and filed, except that typographical errors may be corrected.

5. The joint appendix shall be prefaced by a table of contents showing the parts of the record that it contains, in the order in which the parts are set out, with references to the pages of the joint appendix at which each part begins. The relevant docket entries shall be set out after the table of contents, followed by the other parts of the record in chronological order. When testimony contained in the reporter's transcript of proceedings is set out in the joint appendix, the page of the transcript at which the testimony appears shall be indicated in brackets immediately before the statement that is set out. Omissions in the transcript or in any other document printed in the joint appendix shall be indicated by asterisks. Immaterial formal matters (*e. g.*, captions, subscriptions, acknowledgments) shall be omitted. A question and its answer may be contained in a single paragraph.

6. Exhibits designated for inclusion in the joint appendix may be contained in a separate volume or volumes suitably indexed. The transcript of a proceeding before an administrative agency, board, commission, or officer used in an action in a district court or court of appeals is regarded as an exhibit for the purposes of this paragraph.

7. The Court, on its own motion or that of a party, may dispense with the requirement of a joint appendix and may permit a case to be heard on the original record (with such copies of the record, or relevant parts thereof, as the Court may require) or on the appendix used in the court below, if it conforms to the requirements of this Rule.

8. For good cause, the time limits specified in this Rule may be shortened or extended by the Court or a Justice, or by the Clerk under Rule 30.4.

Rule 27. Calendar

1. From time to time, the Clerk will prepare a calendar of cases ready for argument. A case ordinarily will not be called for argument less than two weeks after the brief on the merits for the respondent or appellee is due.

2. The Clerk will advise counsel when they are required to appear for oral argument and will publish a hearing list

in advance of each argument session for the convenience of counsel and the information of the public.

3. The Court, on its own motion or that of a party, may order that two or more cases involving the same or related questions be argued together as one case or on such other terms as the Court may prescribe.

Rule 28. Oral Argument

1. Oral argument should emphasize and clarify the written arguments in the briefs on the merits. Counsel should assume that all Justices have read the briefs before oral argument. Oral argument read from a prepared text is not favored.

2. The petitioner or appellant shall open and may conclude the argument. A cross-writ of certiorari or cross-appeal will be argued with the initial writ of certiorari or appeal as one case in the time allowed for that one case, and the Court will advise the parties who shall open and close.

3. Unless the Court directs otherwise, each side is allowed one-half hour for argument. Counsel is not required to use all the allotted time. Any request for additional time to argue shall be presented by motion under Rule 21 no more than 15 days after the petitioner's or appellant's brief on the merits is filed, and shall set out specifically and concisely why the case cannot be presented within the half-hour limitation. Additional time is rarely accorded.

4. Only one attorney will be heard for each side, except by leave of the Court on motion filed no more than 15 days after the respondent's or appellee's brief on the merits is filed. Any request for divided argument shall be presented by motion under Rule 21 and shall set out specifically and concisely why more than one attorney should be allowed to argue. Divided argument is not favored.

5. Regardless of the number of counsel participating in oral argument, counsel making the opening argument shall present the case fairly and completely and not reserve points of substance for rebuttal.

6. Oral argument will not be allowed on behalf of any party for whom a brief has not been filed.

7. By leave of the Court, and subject to paragraph 4 of this Rule, counsel for an *amicus curiae* whose brief has been filed as provided in Rule 37 may argue orally on the side of a party, with the consent of that party. In the absence of consent, counsel for an *amicus curiae* may seek leave of the Court to argue orally by a motion setting out specifically and concisely why oral argument would provide assistance to the Court not otherwise available. Such a motion will be granted only in the most extraordinary circumstances.

PART VII. PRACTICE AND PROCEDURE

Rule 29. Filing and Service of Documents; Special Notifications; Corporate Listing

1. Any document required or permitted to be presented to the Court or to a Justice shall be filed with the Clerk.

2. A document is timely filed if it is received by the Clerk within the time specified for filing; or if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark showing that the document was mailed on or before the last day for filing. Commercial postage meter labels alone are not acceptable. If submitted by an inmate confined in an institution, a document is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing and is accompanied by a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the date of deposit and stating that first-class postage has been prepaid. If the postmark is missing or not legible, the Clerk will require the person who mailed the document to submit a notarized statement or declaration in compliance with 28 U. S. C. § 1746 setting out the details of the mailing and stating that the mailing took place on a particular date within the permitted time. A document also is timely filed if it is forwarded through a private delivery or

courier service and is actually received by the Clerk within the time permitted for filing.

3. Any document required by these Rules to be served may be served personally or by mail on each party to the proceeding at or before the time of filing. If the document has been prepared as required by Rule 33.1, three copies shall be served on each other party separately represented in the proceeding. If the document has been prepared as required by Rule 33.2, service of a single copy on each other separately represented party suffices. If personal service is made, it shall consist of delivery at the office of the counsel of record, either to counsel or to an employee therein. If service is by mail, it shall consist of depositing the document with the United States Postal Service, with no less than first-class postage prepaid, addressed to counsel of record at the proper post office address. When a party is not represented by counsel, service shall be made on the party, personally or by mail.

4. (a) If the United States or any federal department, office, agency, officer, or employee is a party to be served, service shall be made on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530–0001. When an agency of the United States that is a party is authorized by law to appear before this Court on its own behalf, or when an officer or employee of the United States is a party, the agency, officer, or employee shall be served in addition to the Solicitor General.

(b) In any proceeding in this Court in which the constitutionality of an Act of Congress is drawn into question, and neither the United States nor any federal department, office, agency, officer, or employee is a party, the initial document filed in this Court shall recite that 28 U. S. C. § 2403(a) may apply and shall be served on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530–0001. In such a proceeding from any court of the United States, as defined by 28 U. S. C. §451, the initial document also shall state whether that court, pursuant to 28 U. S. C. §2403(a), certified to the Attorney General the fact that the constitutionality of an Act of Congress was drawn into question. See Rule 14.1(e)(v).

(c) In any proceeding in this Court in which the constitutionality of any statute of a State is drawn into question, and neither the State nor any agency, officer, or employee thereof is a party, the initial document filed in this Court shall recite that 28 U. S. C. §2403(b) may apply and shall be served on the Attorney General of that State. In such a proceeding from any court of the United States, as defined by 28 U. S. C. §451, the initial document also shall state whether that court, pursuant to 28 U. S. C. §2403(b), certified to the State Attorney General the fact that the constitutionality of a statute of that State was drawn into question. See Rule 14.1(e)(v).

5. Proof of service, when required by these Rules, shall accompany the document when it is presented to the Clerk for filing and shall be separate from it. Proof of service shall contain, or be accompanied by, a statement that all parties required to be served have been served, together with a list of the names, addresses, and telephone numbers of counsel indicating the name of the party or parties each counsel represents. It is not necessary that service on each party required to be served be made in the same manner or evidenced by the same proof. Proof of service may consist of any one of the following:

(a) an acknowledgment of service, signed by counsel of record for the party served, and bearing the address and telephone number of such counsel;

(b) a certificate of service, reciting the facts and circumstances of service in compliance with the appropriate paragraph or paragraphs of this Rule, and signed by a member of the Bar of this Court representing the party on whose behalf service is made or by an attorney appointed to represent that party under the Criminal Justice Act of 1964, see

18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute; or

(c) a notarized affidavit or declaration in compliance with 28 U. S. C. § 1746, reciting the facts and circumstances of service in accordance with the appropriate paragraph or paragraphs of this Rule, whenever service is made by any person not a member of the Bar of this Court and not an attorney appointed to represent a party under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute.

6. Every document, except a joint appendix or *amicus curiae* brief, filed by or on behalf of one or more corporations shall list all parent companies and nonwholly owned subsidiaries of each of the corporate filers. If there is no parent or subsidiary company to be listed, a notation to this effect shall be included in the document. If a list has been included in a document filed earlier in the case, reference may be made to the earlier document (except when the earlier list appeared in an application for an extension of time or for a stay), and only amendments to the list to make it current need be included in the document being filed.

Rule 30. Computation and Extension of Time

1. In the computation of any period of time prescribed or allowed by these Rules, by order of the Court, or by an applicable statute, the day of the act, event, or default from which the designated period begins to run is not included. The last day of the period shall be included, unless it is a Saturday, Sunday, federal legal holiday listed in 5 U. S. C. § 6103, or day on which the Court building is closed by order of the Court or the Chief Justice, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, federal legal holiday, or day on which the Court building is closed.

2. Whenever a Justice or the Clerk is empowered by law or these Rules to extend the time to file any document, an application seeking an extension shall be filed within the period sought to be extended. An application to extend the

time to file a petition for a writ of certiorari or to file a jurisdictional statement must be received by the Clerk at least 10 days before the specified final filing date as computed under these Rules; if received less than 10 days before the final filing date, such application will not be granted except in the most extraordinary circumstances.

3. An application to extend the time to file a petition for a writ of certiorari, to file a jurisdictional statement, to file a reply brief on the merits, or to file a petition for rehearing shall be made to an individual Justice and presented and served on all other parties as provided by Rule 22. Once denied, such an application may not be renewed.

4. An application to extend the time to file any document or paper other than those specified in paragraph 3 of this Rule may be presented in the form of a letter to the Clerk setting out specific reasons why an extension of time is justified. The letter shall be served on all other parties as required by Rule 29. The application may be acted on by the Clerk in the first instance, and any party aggrieved by the Clerk's action may request that the application be submitted to a Justice or to the Court. The Clerk will report action under this paragraph to the Court as instructed.

Rule 31. Translations

Whenever any record to be transmitted to this Court contains material written in a foreign language without a translation made under the authority of the lower court, or admitted to be correct, the clerk of the court transmitting the record shall advise the Clerk of this Court immediately so that this Court may order that a translation be supplied and, if necessary, printed as part of the joint appendix.

Rule 32. Models, Diagrams, and Exhibits

1. Models, diagrams, and exhibits of material forming part of the evidence taken in a case and brought to this Court for its inspection shall be placed in the custody of the Clerk at least two weeks before the case is to be heard or submitted.

2. All models, diagrams, and exhibits of material placed in the custody of the Clerk shall be removed by the parties no

more than 40 days after the case is decided. If this is not done, the Clerk will notify counsel to remove the articles forthwith. If they are not removed within a reasonable time thereafter, the Clerk will destroy them or dispose of them in any other appropriate way.

Rule 33. Document Preparation: Booklet Format; 8½- by 11-Inch Paper Format

1. *Booklet Format:* (a) Except for a document expressly permitted by these Rules to be submitted on 8½- by 11-inch paper, see, *e. g.*, Rules 21, 22, and 39, every document filed with the Court shall be prepared using typesetting (*e. g.*, wordprocessing, electronic publishing, or image setting) and reproduced by offset printing, photocopying, or similar process. The process used must produce a clear, black image on white paper.

(b) The text of every document, including any appendix thereto, except a document permitted to be produced on 8½- by 11-inch paper, shall be typeset in standard 11-point or larger type with 2-point or more leading between lines. The type size and face shall be no smaller than that contained in the United States Reports beginning with Volume 453. Type size and face shall be consistent throughout. No attempt should be made to reduce, compress, or condense the typeface in a manner that would increase the content of a document. Quotations in excess of three lines shall be indented. Footnotes shall appear in print as standard 9-point or larger type with 2-point or more leading between lines. The text of the document must appear on both sides of the page.

(c) Every document, except one permitted to be produced on 8½- by 11-inch paper, shall be produced on paper that is opaque, unglazed, 6⅛ by 9¼ inches in size, and not less than 60 pounds in weight, and shall have margins of at least three-fourths of an inch on all sides. The text field, including footnotes, should be approximately 4⅛ by 7⅛ inches. The document shall be bound firmly in at least two places along the left margin (saddle stitch or perfect binding preferred) so as to permit easy opening, and no part of the text should be obscured by the binding. Spiral, plastic, metal, and string bindings may not be used. Copies of patent documents, except opinions, may be duplicated in such size as is necessary in a separate appendix.

(d) Every document, except one permitted to be produced on 8½- by 11-inch paper, shall comply with the page limits shown on the chart in subparagraph 1(g) of this Rule. The page limits do not include the pages containing the questions presented, the list of parties and corporate affiliates of the filing party, the table of contents, the table of cited authorities, or any appendix. Verbatim quotations required under Rule 14.1(f), if set out in the text of a brief rather than in the appendix, are also excluded. For good cause, the Court or a Justice may grant leave to file a document in excess of the page limits, but application for such leave is not favored. An application to exceed page limits shall comply with Rule 22 and must be received by the Clerk at least 15 days before the filing date of the document in question, except in the most extraordinary circumstances.

(e) Every document, except one permitted to be produced on 8½- by 11-inch paper, shall have a suitable cover consisting of 65-pound weight paper in the color indicated on the chart in subparagraph 1(g) of this Rule. If a separate appendix to any document is filed, the color of its cover shall be the same as that of the cover of the document it supports. The Clerk will furnish a color chart upon request. Counsel shall ensure that there is adequate contrast between the printing and the color of the cover. A document filed by the United States, or by any other federal party represented by the Solicitor General, shall have a gray cover. A joint appendix, answer to a bill of complaint, motion for leave to intervene, and any other document not listed in subparagraph 1(g) of this Rule shall have a tan cover.

(f) Forty copies of a document prepared under this paragraph shall be filed.

(g) Page limits and cover colors for booklet-format documents are as follows:

	Type of Document	Page Limits	Color of Cover
(i)	Petition for a Writ of Certiorari (Rule 14); Motion for Leave to File a Bill of Complaint and Brief in Support (Rule 17.3); Jurisdictional Statement (Rule 18.3); Petition for an Extraordinary Writ (Rule 20.2)	30	white
(ii)	Brief in Opposition (Rule 15.3); Brief in Opposition to Motion for Leave to File an Original Action (Rule 17.5); Motion to Dismiss or Affirm (Rule 18.6); Brief in Opposition to Mandamus or Prohibition (Rule 20.3(b)); Response to a Petition for Habeas Corpus (Rule 20.4)	30	orange
(iii)	Reply to Brief in Opposition (Rules 15.6 and 17.5); Brief Opposing a Motion to Dismiss or Affirm (Rule 18.8)	10	tan
(iv)	Supplemental Brief (Rules 15.8, 17, 18.10, and 25.5)	10	tan
(v)	Brief on the Merits for Petitioner or Appellant (Rule 24); Exceptions by Plaintiff to Report of Special Master (Rule 17)	50	light blue
(vi)	Brief on the Merits for Respondent or Appellee (Rule 24.2); Brief on the Merits for Respondent or Appellee Supporting Petitioner or Appellant (Rule 12.6); Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17)	50	light red
(vii)	Reply Brief on the Merits (Rule 24.4)	20	yellow
(viii)	Reply to Plaintiff's Exceptions to Report of Special Master (Rule 17)	50	orange
(ix)	Reply to Exceptions by Party Other Than Plaintiff to Report of Special Master (Rule 17)	50	yellow
(x)	Brief for an *Amicus Curiae* at the Petition Stage (Rule 37.2)	20	cream
(xi)	Brief for an *Amicus Curiae* in Support of the Plaintiff, Petitioner, or Appellant, or in Support of Neither Party, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)	30	light green
(xii)	Brief for an *Amicus Curiae* in Support of the Defendant, Respondent, or Appellee, on the Merits or in an Original Action at the Exceptions Stage (Rule 37.3)	30	dark green
(xiii)	Petition for Rehearing (Rule 44)	10	tan

2. *8½- by 11-Inch Paper Format:* (a) The text of every document, including any appendix thereto, expressly permitted by these Rules to be presented to the Court on 8½- by 11-inch paper shall appear double spaced, except for indented quotations, which shall be single spaced, on opaque, unglazed, white paper. The document shall be stapled or bound at the upper left-hand corner. Copies, if required, shall be produced on the same type of paper and shall be legible. The original of any such document (except a motion to dismiss or affirm under Rule 18.6) shall be signed by the party proceeding *pro se* or by counsel of record who must be a member of the Bar of this Court or an attorney appointed under the Criminal Justice Act of 1964, see 18 U. S. C. § 3006A(d)(6), or under any other applicable federal statute. Subparagraph 1(g) of this Rule does not apply to documents prepared under this paragraph.

(b) Page limits for documents presented on 8½- by 11-inch paper are: 40 pages for a petition for a writ of certiorari, jurisdictional statement, petition for an extraordinary writ, brief in opposition, or motion to dismiss or affirm; and 15 pages for a reply to a brief in opposition, brief opposing a motion to dismiss or affirm, supplemental brief, or petition for rehearing. The page exclusions specified in subparagraph 1(d) of this Rule apply.

Rule 34. Document Preparation: General Requirements

Every document, whether prepared under Rule 33.1 or Rule 33.2, shall comply with the following provisions:

1. Each document shall bear on its cover, in the order indicated, from the top of the page:

(a) the docket number of the case or, if there is none, a space for one;

(b) the name of this Court;

(c) the October Term in which the document is filed (see Rule 3);

(d) the caption of the case as appropriate in this Court;

(e) the nature of the proceeding and the name of the court from which the action is brought (*e. g.*, "On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit"; or, for a merits brief, "On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit");

(f) the title of the document (*e. g.*, "Petition for Writ of Certiorari," "Brief for Respondent," "Joint Appendix");

(g) the name of the attorney who is counsel of record for the party concerned (who must be a member of the Bar of this Court except as provided in Rule 33.2), and on whom service is to be made, with a notation directly thereunder identifying the attorney as counsel of record and setting out counsel's office address and telephone number. Only one counsel of record may be noted on a single document. The names of other members of the Bar of this Court or of the bar of the highest court of a State acting as counsel, and, if desired, their addresses, may be added, but counsel of record shall be clearly identified. Names of persons other than attorneys admitted to a state bar may not be listed, unless the party is appearing *pro se,* in which case the party's name, address, and telephone number shall appear. The foregoing shall be displayed in an appropriate typographic manner and, except for the identification of counsel, may not be set in type smaller than standard 11-point, if the document is prepared as required by Rule 33.1.

2. Every document exceeding five pages (other than a joint appendix), whether prepared under Rule 33.1 or Rule 33.2, shall contain a table of contents and a table of cited authorities (*i. e.*, cases alphabetically arranged, constitutional provisions, statutes, treatises, and other materials) with references to the pages in the document where such authorities are cited.

3. The body of every document shall bear at its close the name of counsel of record and such other counsel, identified on the cover of the document in conformity with subparagraph 1(g) of this Rule, as may be desired.

Rule 35. Death, Substitution, and Revivor; Public Officers

1. If a party dies after filing a petition for a writ of certiorari to this Court, or after filing a notice of appeal, the authorized representative of the deceased party may appear and, on motion, be substituted as a party. If the representative does not voluntarily become a party, any other party may suggest the death on the record and, on motion, seek an order requiring the representative to become a party within a designated time. If the representative then fails to become a party, the party so moving, if a respondent or appellee, is entitled to have the petition for a writ of certiorari or the appeal dismissed, and if a petitioner or appellant, is entitled to proceed as in any other case of nonappearance by a respondent or appellee. If the substitution of a representative of the deceased is not made within six months after the death of the party, the case shall abate.

2. Whenever a case cannot be revived in the court whose judgment is sought to be reviewed, because the deceased party's authorized representative is not subject to that court's jurisdiction, proceedings will be conducted as this Court may direct.

3. When a public officer who is a party to a proceeding in this Court in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate and any successor in office is automatically substituted as a party. The parties shall notify the Clerk in writing of any such successions. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting substantial rights of the parties will be disregarded.

4. A public officer who is a party to a proceeding in this Court in an official capacity may be described as a party by the officer's official title rather than by name, but the Court may require the name to be added.

Rule 36. Custody of Prisoners in Habeas Corpus Proceedings

1. Pending review in this Court of a decision in a habeas corpus proceeding commenced before a court, Justice, or judge of the United States, the person having custody of the prisoner may not transfer custody to another person unless the transfer is authorized under this Rule.

2. Upon application by a custodian, the court, Justice, or judge who entered the decision under review may authorize transfer and the substitution of a successor custodian as a party.

3. (a) Pending review of a decision failing or refusing to release a prisoner, the prisoner may be detained in the custody from which release is sought or in other appropriate custody or may be enlarged on personal recognizance or bail, as may appear appropriate to the court, Justice, or judge who entered the decision, or to the court of appeals, this Court, or a judge or Justice of either court.

(b) Pending review of a decision ordering release, the prisoner shall be enlarged on personal recognizance or bail, unless the court, Justice, or judge who entered the decision, or the court of appeals, this Court, or a judge or Justice of either court, orders otherwise.

4. An initial order respecting the custody or enlargement of the prisoner, and any recognizance or surety taken, shall continue in effect pending review in the court of appeals and in this Court unless for reasons shown to the court of appeals, this Court, or a judge or Justice of either court, the order is modified or an independent order respecting custody, enlargement, or surety is entered.

Rule 37. Brief for an *Amicus Curiae*

1. An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored.

2. (a) An *amicus curiae* brief submitted before the Court's consideration of a petition for a writ of certiorari, motion for leave to file a bill of complaint, jurisdictional statement, or petition for an extraordinary writ, may be filed if accompanied by the written consent of all parties, or if the Court grants leave to file under subparagraph 2(b) of this Rule. The brief shall be submitted within the time allowed for filing a brief in opposition or for filing a motion to dismiss or affirm. The *amicus curiae* brief shall specify whether consent was granted, and its cover shall identify the party supported.

(b) When a party to the case has withheld consent, a motion for leave to file an *amicus curiae* brief before the Court's consideration of a petition for a writ of certiorari, motion for leave to file a bill of complaint, jurisdictional statement, or petition for an extraordinary writ may be presented to the Court. The motion, prepared as required by Rule 33.1 and as one document with the brief sought to be filed, shall be submitted within the time allowed for filing an *amicus curiae* brief, and shall indicate the party or parties who have withheld consent and state the nature of the movant's interest. Such a motion is not favored.

3. (a) An *amicus curiae* brief in a case before the Court for oral argument may be filed if accompanied by the written consent of all parties, or if the Court grants leave to file under subparagraph 3(b) of this Rule. The brief shall be submitted within the time allowed for filing the brief for the party supported, or if in support of neither party, within the time allowed for filing the petitioner's or appellant's brief. The *amicus curiae* brief shall specify whether consent was granted, and its cover shall identify the party supported or indicate whether it suggests affirmance or reversal. The Clerk will not file a reply brief for an *amicus curiae*, or a brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing.

(b) When a party to a case before the Court for oral argument has withheld consent, a motion for leave to file an *amicus curiae* brief may be presented to the Court. The motion, prepared as required by Rule 33.1 and as one document with the brief sought to be filed, shall be submitted within the time allowed for filing an *amicus curiae* brief, and shall indicate the party or parties who have withheld consent and state the nature of the movant's interest.

4. No motion for leave to file an *amicus curiae* brief is necessary if the brief is presented on behalf of the United States by the Solicitor General; on behalf of any agency of the United States allowed by law to appear before this Court when submitted by the agency's authorized legal representative; on behalf of a State, Commonwealth, Territory, or Possession when submitted by its Attorney General; or on behalf of a city, county, town, or similar entity when submitted by its authorized law officer.

5. A brief or motion filed under this Rule shall be accompanied by proof of service as required by Rule 29, and shall comply with the applicable provisions of Rules 21, 24, and 33.1 (except that it suffices to set out in the brief the interest of the *amicus curiae,* the summary of the argument, the argument, and the conclusion). A motion for leave to file may not exceed five pages. A party served with the motion may file an objection thereto, stating concisely the reasons for withholding consent; the objection shall be prepared as required by Rule 33.2.

6. Except for briefs presented on behalf of *amicus curiae* listed in Rule 37.4, a brief filed under this Rule shall indicate whether counsel for a party authored the brief in whole or in part and shall identify every person or entity, other than the *amicus curiae,* its members, or its counsel, who made a monetary contribution to the preparation or submission of the brief. The disclosure shall be made in the first footnote on the first page of text.

Rule 38. Fees

Under 28 U. S. C. § 1911, the fees charged by the Clerk are:

(a) for docketing a case on a petition for a writ of certiorari or on appeal or for docketing any other proceeding, except a certified question or a motion to docket and dismiss an appeal under Rule 18.5, $300;

(b) for filing a petition for rehearing or a motion for leave to file a petition for rehearing, $200;

(c) for reproducing and certifying any record or paper, $1 per page; and for comparing with the original thereof any photographic reproduction of any record or paper, when furnished by the person requesting its certification, $.50 per page;

(d) for a certificate bearing the seal of the Court, $10; and

(e) for a check paid to the Court, Clerk, or Marshal that is returned for lack of funds, $35.

Rule 39. Proceedings *In Forma Pauperis*

1. A party seeking to proceed *in forma pauperis* shall file a motion for leave to do so, together with the party's notarized affidavit or declaration (in compliance with 28 U. S. C. § 1746) in the form prescribed by the Federal Rules of Appellate Procedure, Form 4. The motion shall state whether leave to proceed *in forma pauperis* was sought in any other court and, if so, whether leave was granted. If the United States district court or the United States court of appeals has appointed counsel under the Criminal Justice Act of 1964, 18 U. S. C. § 3006A, or under any other applicable federal statute, no affidavit or declaration is required, but the motion shall cite the statute under which counsel was appointed.

2. If leave to proceed *in forma pauperis* is sought for the purpose of filing a document, the motion, and an affidavit or declaration if required, shall be filed together with that document and shall comply in every respect with Rule 21. As provided in that Rule, it suffices to file an original and 10 copies, unless the party is an inmate confined in an institution and is not represented by counsel, in which case the original, alone, suffices. A copy of the motion shall precede and be attached to each copy of the accompanying document.

3. Except when these Rules expressly provide that a document shall be prepared as required by Rule 33.1, every docu-

ment presented by a party proceeding under this Rule shall be prepared as required by Rule 33.2 (unless such preparation is impossible). Every document shall be legible. While making due allowance for any case presented under this Rule by a person appearing *pro se*, the Clerk will not file any document if it does not comply with the substance of these Rules or is jurisdictionally out of time.

4. When the documents required by paragraphs 1 and 2 of this Rule are presented to the Clerk, accompanied by proof of service as required by Rule 29, they will be placed on the docket without the payment of a docket fee or any other fee.

5. The respondent or appellee in a case filed *in forma pauperis* shall respond in the same manner and within the same time as in any other case of the same nature, except that the filing of an original and 10 copies of a response prepared as required by Rule 33.2, with proof of service as required by Rule 29, suffices. The respondent or appellee may challenge the grounds for the motion for leave to proceed *in forma pauperis* in a separate document or in the response itself.

6. Whenever the Court appoints counsel for an indigent party in a case set for oral argument, the briefs on the merits submitted by that counsel, unless otherwise requested, shall be prepared under the Clerk's supervision. The Clerk also will reimburse appointed counsel for any necessary travel expenses to Washington, D. C., and return in connection with the argument.

7. In a case in which certiorari has been granted, probable jurisdiction noted, or consideration of jurisdiction postponed, this Court may appoint counsel to represent a party financially unable to afford an attorney to the extent authorized by the Criminal Justice Act of 1964, 18 U. S. C. § 3006A, or by any other applicable federal statute.

8. If satisfied that a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ is frivolous or malicious, the Court may deny leave to proceed *in forma pauperis*.

Rule 40. Veterans, Seamen, and Military Cases

1. A veteran suing to establish reemployment rights under any provision of law exempting veterans from the payment of fees or court costs, may file a motion for leave to proceed on papers prepared as required by Rule 33.2. The motion shall ask leave to proceed as a veteran and be accompanied by an affidavit or declaration setting out the moving party's veteran status. A copy of the motion shall precede and be attached to each copy of the petition for a writ of certiorari or other substantive document filed by the veteran.

2. A seaman suing under 28 U. S. C. § 1916 may proceed without prepayment of fees or costs or furnishing security therefor, but is not entitled to proceed under Rule 33.2, except as authorized by the Court on separate motion under Rule 39.

3. An accused person petitioning for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces under 28 U. S. C. § 1259 may proceed without prepayment of fees or costs or furnishing security therefor and without filing an affidavit of indigency, but is not entitled to proceed on papers prepared as required by Rule 33.2, except as authorized by the Court on separate motion under Rule 39.

PART VIII. DISPOSITION OF CASES

Rule 41. Opinions of the Court

Opinions of the Court will be released by the Clerk immediately upon their announcement from the bench, or as the Court otherwise directs. Thereafter, the Clerk will cause the opinions to be issued in slip form, and the Reporter of Decisions will prepare them for publication in the preliminary prints and bound volumes of the United States Reports.

Rule 42. Interest and Damages

1. If a judgment for money in a civil case is affirmed, any interest allowed by law is payable from the date the judg-

ment under review was entered. If a judgment is modified or reversed with a direction that a judgment for money be entered below, the mandate will contain instructions with respect to the allowance of interest. Interest in cases arising in a state court is allowed at the same rate that similar judgments bear interest in the courts of the State in which judgment is directed to be entered. Interest in cases arising in a court of the United States is allowed at the interest rate authorized by law.

2. When a petition for a writ of certiorari, an appeal, or an application for other relief is frivolous, the Court may award the respondent or appellee just damages, and single or double costs under Rule 43. Damages or costs may be awarded against the petitioner, appellant, or applicant, against the party's counsel, or against both party and counsel.

Rule 43. Costs

1. If the Court affirms a judgment, the petitioner or appellant shall pay costs unless the Court otherwise orders.

2. If the Court reverses or vacates a judgment, the respondent or appellee shall pay costs unless the Court otherwise orders.

3. The Clerk's fees and the cost of printing the joint appendix are the only taxable items in this Court. The cost of the transcript of the record from the court below is also a taxable item, but shall be taxable in that court as costs in the case. The expenses of printing briefs, motions, petitions, or jurisdictional statements are not taxable.

4. In a case involving a certified question, costs are equally divided unless the Court otherwise orders, except that if the Court decides the whole matter in controversy, as permitted by Rule 19.2, costs are allowed as provided in paragraphs 1 and 2 of this Rule.

5. To the extent permitted by 28 U. S. C. § 2412, costs under this Rule are allowed for or against the United States or an officer or agent thereof, unless expressly waived or unless the Court otherwise orders.

6. When costs are allowed in this Court, the Clerk will insert an itemization of the costs in the body of the mandate or judgment sent to the court below. The prevailing side may not submit a bill of costs.

7. In extraordinary circumstances the Court may adjudge double costs.

Rule 44. Rehearing

1. Any petition for the rehearing of any judgment or decision of the Court on the merits shall be filed within 25 days after entry of the judgment or decision, unless the Court or a Justice shortens or extends the time. The petitioner shall file 40 copies of the rehearing petition and shall pay the filing fee prescribed by Rule 38(b), except that a petitioner proceeding *in forma pauperis* under Rule 39, including an inmate of an institution, shall file the number of copies required for a petition by such a person under Rule 12.2. The petition shall state its grounds briefly and distinctly and shall be served as required by Rule 29. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). A copy of the certificate shall follow and be attached to each copy of the petition. A petition for rehearing is not subject to oral argument and will not be granted except by a majority of the Court, at the instance of a Justice who concurred in the judgment or decision.

2. Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is

restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). A copy of the certificate shall follow and be attached to each copy of the petition. The Clerk will not file a petition without a certificate. The petition is not subject to oral argument.

3. The Clerk will not file any response to a petition for rehearing unless the Court requests a response. In the absence of extraordinary circumstances, the Court will not grant a petition for rehearing without first requesting a response.

4. The Clerk will not file consecutive petitions and petitions that are out of time under this Rule.

5. The Clerk will not file any brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing.

Rule 45. Process; Mandates

1. All process of this Court issues in the name of the President of the United States.

2. In a case on review from a state court, the mandate issues 25 days after entry of the judgment, unless the Court or a Justice shortens or extends the time, or unless the parties stipulate that it issue sooner. The filing of a petition for rehearing stays the mandate until disposition of the petition, unless the Court orders otherwise. If the petition is denied, the mandate issues forthwith.

3. In a case on review from any court of the United States, as defined by 28 U. S. C. § 451, a formal mandate does not issue unless specially directed; instead, the Clerk of this Court will send the clerk of the lower court a copy of the opinion or order of this Court and a certified copy of the judgment. The certified copy of the judgment, prepared and signed by this Court's Clerk, will provide for costs if any are awarded. In all other respects, the provisions of paragraph 2 of this Rule apply.

Rule 46. Dismissing Cases

1. At any stage of the proceedings, whenever all parties file with the Clerk an agreement in writing that a case be dismissed, specifying the terms for payment of costs, and pay to the Clerk any fees then due, the Clerk, without further reference to the Court, will enter an order of dismissal.

2. (a) A petitioner or appellant may file a motion to dismiss the case, with proof of service as required by Rule 29, tendering to the Clerk any fees due and costs payable. No more than 15 days after service thereof, an adverse party may file an objection, limited to the amount of damages and costs in this Court alleged to be payable or to showing that the moving party does not represent all petitioners or appellants. The Clerk will not file any objection not so limited.

(b) When the objection asserts that the moving party does not represent all the petitioners or appellants, the party moving for dismissal may file a reply within 10 days, after which time the matter will be submitted to the Court for its determination.

(c) If no objection is filed—or if upon objection going only to the amount of damages and costs in this Court, the party moving for dismissal tenders the additional damages and costs in full within 10 days of the demand therefor—the Clerk, without further reference to the Court, will enter an order of dismissal. If, after objection as to the amount of damages and costs in this Court, the moving party does not respond by a tender within 10 days, the Clerk will report the matter to the Court for its determination.

3. No mandate or other process will issue on a dismissal under this Rule without an order of the Court.

Part IX. Definitions and Effective Date

Rule 47. Reference to "State Court" and "State Law"

The term "state court," when used in these Rules, includes the District of Columbia Court of Appeals and the Supreme Court of the Commonwealth of Puerto Rico. See 28 U. S. C.

§§ 1257 and 1258. References in these Rules to the common law and statutes of a State include the common law and statutes of the District of Columbia and of the Commonwealth of Puerto Rico.

Rule 48. Effective Date of Rules

1. These Rules, adopted January 16, 1997, will be effective May 1, 1997.

2. The Rules govern all proceedings after their effective date except to the extent that, in the opinion of the Court, their application to a pending matter would not be feasible or would work an injustice, in which event the former procedure applies.

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OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

NETHERLAND, WARDEN *v.* GRAY

ON APPLICATION TO VACATE STAY OF EXECUTION

No. A–425. Decided December 23, 1996

Virginia's application to vacate the stay of execution in respondent Gray's case is denied. There appears to be no execution scheduled. Thus, it cannot be stayed, and there is nothing to be vacated. See *Netherland* v. *Tuggle*, 517 U. S. 1301.

Chief Justice Rehnquist, Circuit Justice.

The Commonwealth of Virginia has asked me to vacate the Court of Appeals for the Fourth Circuit's stay of execution in respondent Gray's case, noting that the court did not purport to follow the standard for such stays set out in *Barefoot* v. *Estelle*, 463 U. S. 880 (1983).

In *Gray* v. *Netherland*, 518 U. S. 152, 170–171 (1996), we remanded to the Court of Appeals Gray's claim that the Commonwealth had violated due process by misleading him about evidence it intended to use at sentencing. The court held that the claim was procedurally defaulted. *Gray* v. *Netherland*, 99 F. 3d 158, 166 (CA4 1996). The Court of Appeals therefore remanded Gray's case to the District Court with instructions to dismiss his habeas corpus petition but added, "[i]n view of the Supreme Court's opinion remanding the case to us, we think the respectful course is to stay both our mandate and [Gray's] execution until such time as the Supreme Court rules on any petition for certiorari." *Ibid.*

We have repeatedly and recently stated that it is not appropriate for a court of appeals to grant a stay of execution to permit a death-row inmate to file a petition for a writ of certiorari without first conducting the *Barefoot* inquiry.

See *Netherland* v. *Tuggle,* 515 U. S. 951, 952 (1995). We have rejected the view that "a capital defendant as a matter of right [is] entitled to a stay of execution until he has filed a petition for certiorari in due course." *Ibid.*

I nonetheless deny the Commonwealth's motion to vacate the stay of execution because, so far as I can tell, there is no execution scheduled. If there is no execution scheduled, it cannot be stayed, and there is nothing for me to vacate. See *Netherland* v. *Tuggle,* 517 U. S. 1301 (1996) (REHNQUIST, C. J., Circuit Justice) (no stay of execution to vacate where Court of Appeals had only stayed its own mandate).

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